

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NORTH DAKOTA

3 Case No. 25-30002 (Jointly Administered)

4 - - - - - x

5 In the Matter of:

6

7 GENERATIONS ON 1st, LLC,

8

9 Debtor.

10 - - - - - x

11 Case No. 25-30003 (Jointly Administered)

12 - - - - - x

13 In the Matter of:

14

15 PARKSIDE PLACE, LLC,

16

17 Debtor.

18 - - - - - x

19 Case No. 25-30004

20 - - - - - x

21 In the Matter of:

22

23 The Ruins, LLC,

24

25 Debtor.

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<p>1 ----- X</p> <p>2</p> <p>3</p> <p>4 United States Bankruptcy Court</p> <p>5 Quentin N. Burdick U.S. Courthouse</p> <p>6 655 1st Ave. N.</p> <p>7 Fargo, ND 58102</p> <p>8</p> <p>9 Thursday, November 20, 2025</p> <p>10 8:15 AM</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 B E F O R E :</p> <p>22 H O N S H O N H A S T I N G S</p> <p>23 U . S . B A N K R U P T C Y J U D G E</p> <p>24</p> <p>25 E C R O : U N K N O W N</p>	<p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 THE DAKOTA BANKRUPTCY FIRM</p> <p>4 Attorney for Debtors</p> <p>5 1630 First Avenue North, Suite B</p> <p>6 Fargo, ND 58102-4246</p> <p>7</p> <p>8 BY: MAURICE VERSTANDIG</p> <p>9 CHRISTIANNA A. CATHCART</p> <p>10</p> <p>11 VOGEL LAW FIRM</p> <p>12 Attorneys for Red River State Bank</p> <p>13 218 Northern Pacific Avenue</p> <p>14 Fargo, ND 58102</p> <p>15</p> <p>16 BY: KESHA TANABE</p> <p>17 CAREN W. STANLEY</p> <p>18 DREW J. HUSHKA</p> <p>19</p> <p>20 DAVENPORT EVANS HURWITZ &amp; SMITH LLP</p> <p>21 Attorney for Red River State Bank</p> <p>22 206 West 14th Street</p> <p>23 Sioux Falls, SD 57101-1030</p> <p>24</p> <p>25 BY: ANTHONY M. HOHN</p>
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<p>1 HEARING re Motion by Red River State Bank to Convert Case</p> <p>2 from Chapter 11 to 7 filed 09/26/2025 (Doc. 109)</p> <p>3</p> <p>4 HEARING re Joinder by Watertown Development Company to Red</p> <p>5 River State Bank's Motion to Convert Case from Chapter 11 to</p> <p>6 7 filed 10/10/2025 (Doc. 131)</p> <p>7</p> <p>8 HEARING re Objection by Debtor to Red River State Bank's</p> <p>9 Motion to Convert Case from Chapter 11 to Chapter 7 filed</p> <p>10 10/17/2025 (Doc. 143)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Transcribed by: Sonya Ledanski Hyde</p>	<p>1 KD LAW, PLLC</p> <p>2 Attorney for D&amp;M Industries, Inc.</p> <p>3 3429 Interstate Boulevard</p> <p>4 P.O. Box 9231</p> <p>5 Fargo, ND 58106-9231</p> <p>6</p> <p>7 BY: JOHN M. KRINGS, JR.</p> <p>8</p> <p>9 WOODS FULLER SHULTZ &amp; SMITH PC</p> <p>10 Attorney for Watertown Development Company</p> <p>11 300 South Phillips Avenue, Suite 300</p> <p>12 Sioux Falls, SD 57104</p> <p>13</p> <p>14 BY: JORDAN J. FEIST</p> <p>15</p> <p>16 BASSFORD REMELE</p> <p>17 Attorney for Diamond Wall Systems</p> <p>18 Fifth Street Towers</p> <p>19 100 South 5th Street, Suite 1500</p> <p>20 Minneapolis, MN 55402</p> <p>21</p> <p>22 BY: JEFFREY D. KLOBUCAR</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESSES: DIRECT: CROSS: REDIRECT: RECROSS:</p> <p>4 MATTHEW GEHRTZ 8/25/84 142 175</p> <p>5</p> <p>6 VOIR DIRE OF MATTHEW GEHRTZ BY MR. VERSTANDIG: Page 22</p> <p>7</p> <p>8 EXHIBITS: PAGE:</p> <p>9 Exhibit 60-1(A) Expert Report, Pages 1-401 84</p> <p>10 Exhibit 60-1 Expert Report, Page 406 132</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 lightly tap it. Is it green?</p> <p>2 MR. GEHRTZ: There we go. Yes. Thank you.</p> <p>3 THE COURT: All right. I'm going to have you</p> <p>4 state your name for the record just so I can make sure I</p> <p>5 hear.</p> <p>6 MR. GEHRTZ: Matthew Gehrtz.</p> <p>7 THE COURT: All right. I can hear. You may</p> <p>8 proceed.</p> <p>9 MR. HUSHKA: Thank you, Your Honor.</p> <p>10 DIRECT EXAMINATION OF MATTHEW GEHRTZ</p> <p>11 BY MR. HUSHKA:</p> <p>12 Q Mr. Gehrtz, I'd like to begin with your educational</p> <p>13 background. Did you attend high school?</p> <p>14 A Yes, I did.</p> <p>15 Q Which high school?</p> <p>16 A Park Christian in Moorhead.</p> <p>17 Q Here in Fargo?</p> <p>18 A In Moorhead.</p> <p>19 Q In Moorehead, okay.</p> <p>20 A Yeah.</p> <p>21 Q Did you graduate?</p> <p>22 A I did, yes.</p> <p>23 Q When did you graduate from high school?</p> <p>24 A Graduated in 2007.</p> <p>25 Q What did you do after graduation?</p>
<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT: We are back on the record with</p> <p>3 bankruptcy Case Number 25-30004, The Ruins LLC. And when we</p> <p>4 broke, the parties had presented testimony and argument,</p> <p>5 some argument on whether the Court should find cause to</p> <p>6 dismiss or convert. During that hearing, I advised the</p> <p>7 court that under the statute I must also consider unusual</p> <p>8 circumstances if that's presented. And so the parties</p> <p>9 requested an opportunity to provide some additional</p> <p>10 evidence, which I am happy to grant.</p> <p>11 So it's your motion, Red River State Bank. You</p> <p>12 may proceed with calling your next witness.</p> <p>13 MR. HUSHKA: Thank you, Your Honor. We would call</p> <p>14 Mr. Matthew Gehrtz.</p> <p>15 THE COURT: Please state your name for the record.</p> <p>16 MR. GEHRTZ: Matthew Gehrtz.</p> <p>17 THE COURT: Do you solemnly swear that the</p> <p>18 testimony you are about to give in this case will be the</p> <p>19 truth, the whole truth, and nothing but the truth, so help</p> <p>20 you God?</p> <p>21 MR. GEHRTZ: (indiscernible).</p> <p>22 THE COURT: Please take the stand. All right.</p> <p>23 I'm going to have you scooch up to the microphone and then</p> <p>24 tap it until you see that it's green. There's a little</p> <p>25 button on the base. There you go. So you have to just</p>	<p style="text-align: right;">Page 9</p> <p>1 A After graduation I went to NDSU and attended civil</p> <p>2 engineering school from 2007 through 2011.</p> <p>3 Q Did you graduate in 2011?</p> <p>4 A I did, yes.</p> <p>5 Q And what was your major?</p> <p>6 A Civil engineering with an emphasis in structural.</p> <p>7 Q What did you --</p> <p>8 THE COURT: I'm going to have you speak up just a</p> <p>9 little bit.</p> <p>10 THE WITNESS: Sorry.</p> <p>11 THE COURT: And repeat what your degree was in</p> <p>12 because I didn't catch it.</p> <p>13 THE WITNESS: My degree was in civil engineering</p> <p>14 with an emphasis in structural engineering.</p> <p>15 THE COURT: Great. Thank you. I can hear you so</p> <p>16 much better. Thanks.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 BY MR. HUSHKA:</p> <p>19 Q What did you do after graduation from NDSU?</p> <p>20 A I moved to Colorado and worked for an engineering firm</p> <p>21 for approximately four years. Just over four years.</p> <p>22 Q Did you go receive any additional schooling while in</p> <p>23 Colorado?</p> <p>24 A Yes. While I was at my employer in Colorado, I</p> <p>25 attended CU -- University of Colorado Denver and obtained my</p>

<p style="text-align: right;">Page 10</p> <p>1 master's in business administration with an emphasis in 2 finance. 3 Q When did you receive that degree? 4 A It was approximately -- I believe it was around 2018 or 5 so. 6 Q Do you hold any professional certificates, licenses or 7 credentials? 8 A I do. I am a professional engineer in the state of 9 Wyoming. 10 Q And what are the requirements to be licensed as a 11 professional engineer by Wyoming? 12 A You have to work under a professional engineer for four 13 years or more. And then you have to take a licensure test, 14 pass it, obviously, and then receive your licensure. 15 Q Okay. I can assume that you passed then? 16 A I did, yes. 17 Q Have you ever been subject to any disciplinary 18 proceedings related to that license? 19 A No. 20 Q Have you ever been subject to any disciplinary 21 proceedings related to any court or administrative 22 proceeding? 23 A No. 24 Q You briefly touched on your work history. I want to 25 talk about that a little bit more. You said you were</p>	<p style="text-align: right;">Page 12</p> <p>1 power lines and substations and things of that nature. 2 Q And that was four years of your employment there?&gt; 3 A Correct, yes. 4 Q When did your employment with Black &amp; Veatch end? 5 A I finished with Black &amp; Veatch in 2015. And then moved 6 back here to Fargo and started work with Gehrtz Construction 7 Services in 2016. 8 Q So is that why you left Black &amp; Veatch? 9 A It was, yes. 10 Q No disciplinary issues? You weren't terminated or 11 anything? 12 A Correct, no. 13 Q Okay. You said you worked for who when you moved back? 14 A Gehrtz Construction Services. 15 Q Okay. What is Gehrtz Construction Services? 16 A Gehrtz Construction Service is a construction 17 management firm. We specialize in project management and 18 oversight of construction. We don't self-perform any work. 19 So our primary goals are to schedule, coordinate, and we'll 20 be overseeing a project from start to finish, whether that 21 be budget creation, estimation on the front end of a 22 project, bid and scope developments that we can bid out a 23 job and price it out, work on subcontracts. So we really 24 handle all of the construction-related activities from start 25 to finish throughout the entire course of a construction</p>
<p style="text-align: right;">Page 11</p> <p>1 working on receiving your MBA. Is that correct? 2 A That's correct, yes. 3 Q What was the name of that employer? 4 A Black &amp; Veatch. 5 Q What does Black &amp; Veatch do? 6 A They are a municipal engineering firm that specializes 7 in power transmission and infrastructure design and 8 construction. 9 Q Approximately how many employees? 10 A It's a large company. I think it's approximately -- 11 it's -- I want to say it's more than 10,000. I don't know 12 that for sure. But it's a large and it's a global company. 13 Q Okay. What was your position or job title with Black &amp; 14 Veatch? 15 A My position was civil engineer. And at that time it 16 was engineering training. It was the designation I have 17 until I have my professional licensure. So I was an 18 engineer that was working underneath a professional engineer 19 at that time. 20 Q What were your job responsibilities for them? 21 A My job responsibilities primarily were specific -- 22 doing the design and the calculations for the particular 23 projects that we work on. Primarily it was structural, 24 foundation, and at that time I was working in power 25 transmission. So I was designing foundations for overhead</p>	<p style="text-align: right;">Page 13</p> <p>1 project without actually self-performing any of the work. 2 So our primary responsibility is management, oversight, and 3 quality control. 4 Q So you're not doing the construction, but you're 5 overseeing the construction. Is that a fair -- 6 A That's correct, yes. 7 Q Okay. What is your title with Gehrtz Construction? 8 A Currently principal construction manager. 9 Q Okay. Looking at the Gehrtz Construction website, it 10 looks like you kind of have services broken down into pre- 11 construction and then the construction phase. Is that an 12 accurate description? 13 A That is accurate, yes. 14 Q Okay. What are the pre-construction phase or design 15 phase services offered? 16 A Pre-construction services would be estimating. As a 17 drawing set is developed with an architect, we'll create 18 budgets to identify a cost of a potential project. And as 19 the drawings further develop, we'll do schematic design, 20 design development and construction documents, estimates so 21 we can see how the budget is progressing as the design is 22 progressing. Once it is complete, then we'll put together 23 scopes of work to identify what work each subcontractor 24 would be responsible for. We'll then prepare bid documents 25 to send out to the market to bid. Typically we like to see</p>

<p style="text-align: right;">Page 14</p> <p>1 two, three, four bidders in every bid package so that we</p> <p>2 ensure competitiveness. Once we receive all those bids and</p> <p>3 we qualify the bids, make sure that there isn't anything</p> <p>4 that's missing from bidder A to bidder B to bidder C, we'll</p> <p>5 qualify the bidders to make sure that they can complete the</p> <p>6 work on time, they can complete it within the schedule that</p> <p>7 we need them to complete and that they have the manpower to</p> <p>8 do the job that needs to be done.</p> <p>9 So once that's all completed, then we'll put that</p> <p>10 together as a package and review it with the owner or the</p> <p>11 stakeholders, whoever that particular case. And that</p> <p>12 essentially concludes the pre-construction portion of a</p> <p>13 project.</p> <p>14 Q Are you personally familiar and experienced with all</p> <p>15 those pre-construction services?</p> <p>16 A Yes, I am.</p> <p>17 Q Okay. Approximately how many projects, if you even</p> <p>18 have a rough ballpark, have you provided pre-construction</p> <p>19 services for?</p> <p>20 A Oh, it's been I would say more than 50. I mean, quite</p> <p>21 a few. Every single project we deal with typically we're</p> <p>22 involved in pre-construction in some manner.</p> <p>23 Q And what types of projects would these all be?</p> <p>24 A It ranges from industrial to education to religious to</p> <p>25 mixed use. It spans pretty much every industry. I mean,</p>	<p style="text-align: right;">Page 16</p> <p>1 subcontracts for any trade that's on the site. We would</p> <p>2 also be doing budget and cost management throughout the</p> <p>3 course of construction. Anything related to the contractual</p> <p>4 side of things we would provide in the course of a</p> <p>5 construction project under that scope of work.</p> <p>6 Q I took a peek at the Gehrtz Construction Services</p> <p>7 website and I found 32 different construction administration</p> <p>8 services. I don't want to belabor it for the Court, but can</p> <p>9 you identify if there's any of those 32 services that would</p> <p>10 be particularly relevant to what you were asked to look into</p> <p>11 for The Ruins?</p> <p>12 A Can you list a few that you see on there?</p> <p>13 Q I'll have to --</p> <p>14 A Just so that I don't belabor as well.</p> <p>15 Q I guess what construction services are particularly</p> <p>16 relevant for The Ruins in what you were asked to do if</p> <p>17 anything.</p> <p>18 A I would say quality control, site management, budget</p> <p>19 control, budget estimating. I would say site inspections,</p> <p>20 documentation, punch listing. A lot of those items and</p> <p>21 activities would be pertinent to this scenario.</p> <p>22 Q Are you personally familiar with all those services?</p> <p>23 A Yes, I am.</p> <p>24 Q Can you explain your personal familiarity or experience</p> <p>25 with those services?</p>
<p style="text-align: right;">Page 15</p> <p>1 there isn't anything that we wouldn't necessarily do from a</p> <p>2 construction management standpoint.</p> <p>3 Q You mentioned mixed use. Is that what you consider The</p> <p>4 Ruins development to be?</p> <p>5 A I would, yeah.</p> <p>6 Q Okay. So you're familiar with mixed use development?</p> <p>7 A Yes, I am.</p> <p>8 Q From both a pre-planning and a construction aspect?</p> <p>9 A Yes, correct.</p> <p>10 Q All right. Were any of these services that you just</p> <p>11 kind of discussed relevant -- particularly relevant to what</p> <p>12 you've been asked for to look at with respect to The Ruins?</p> <p>13 A I would say yes in the respect that we need to have a</p> <p>14 fairly good understanding of what typically falls within</p> <p>15 certain subcontractors' responsibilities. So having that</p> <p>16 knowledge would help me base my assumptions on where I came</p> <p>17 to -- from the reporting standpoint.</p> <p>18 Q Does Gehrtz Construction also provide construction</p> <p>19 phase services?</p> <p>20 A We do, yes.</p> <p>21 Q Okay. Construction administrative services?</p> <p>22 A We do, yes.</p> <p>23 Q Can you define that term for the Court?</p> <p>24 A Construction administration services would be anything</p> <p>25 that relates to contractual documents, putting together</p>	<p style="text-align: right;">Page 17</p> <p>1 A on this particular project or in general?</p> <p>2 Q Just in general for your background.</p> <p>3 Q Okay. In general, I mean, my role as a construction</p> <p>4 manager if I'm on a particular project, I will be receiving</p> <p>5 pay requests from all the subcontractors. I'll review the</p> <p>6 pay request, make sure that it's complete, make sure the</p> <p>7 work that they're requesting payment for has actually been</p> <p>8 completed on the site. I'll also verify if they're complete</p> <p>9 and accurate from a documentation standpoint, reviewing that</p> <p>10 the contract total and the initial total is correct, any</p> <p>11 change orders are correct and the process -- or the progress</p> <p>12 is shown accurately on the pay request and approve it.</p> <p>13 In addition to that, to supplement that we'll do site</p> <p>14 visits and if we're not already on site to validate that</p> <p>15 work is complete, we'll provide photos and documentation to</p> <p>16 support the pay request to ensure the work that's being</p> <p>17 requested for payment is actually being completed so that</p> <p>18 it's not billing ahead of where progress is actually at.</p> <p>19 Q You said your current position with Gehrtz Construction</p> <p>20 was what again? Sorry.</p> <p>21 A Principal construction manager.</p> <p>22 Q And what are your job duties and responsibilities,</p> <p>23 anything that we haven't already discussed?</p> <p>24 A In addition to the project-related duties, there's also</p> <p>25 business-related duties as a principal construction manager,</p>

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<p>1 but I don't know if that pertains necessarily to this.</p> <p>2 Q Fair enough. I want to talk about whether or not</p> <p>3 you've provided expert services before. Have you ever</p> <p>4 testified as an expert in a prior lawsuit or arbitration or</p> <p>5 anything of that nature?</p> <p>6 A I have not.</p> <p>7 Q Okay. Have you ever provided expert services for an</p> <p>8 entity before?</p> <p>9 A In a legal context?</p> <p>10 Q Well just as -- have you ever been retained by a third</p> <p>11 party kind of after the fact to come in and take a look at a</p> <p>12 project?</p> <p>13 A Yes, we have.</p> <p>14 Q What kind of services do you provide in those</p> <p>15 circumstances?</p> <p>16 A It would be similar to this in the respect of a third-</p> <p>17 party site inspection to validate construction is where it</p> <p>18 says it is. Typically those are for a bank as a third party</p> <p>19 inspection to validate pay requests prior to paying</p> <p>20 subcontractors.</p> <p>21 Q Do you have an approximation of how many times you've</p> <p>22 provided those types of services?</p> <p>23 A More than a dozen. I don't have a specific number for</p> <p>24 that, but numerous times.</p> <p>25 Q And you said normally these are provided for banks.</p>	<p>1 Q When did you first learn about The Ruins matter?</p> <p>2 A Red River State Bank had contacted Gehertz Construction</p> <p>3 at or around late March, early April of 2024 in regards to</p> <p>4 the case.</p> <p>5 Q You said Red River State Bank. Who at the bank?</p> <p>6 A Charlie Aarstad, Charles Aarstad.</p> <p>7 Q You said that was in twenty...</p> <p>8 A It was in 2024. I believe it was late March, early</p> <p>9 April timeframe. I don't recall the exact date on when the</p> <p>10 call happened or the -- when the contact happened.</p> <p>11 Q Okay. What was the nature of that contact? Was he</p> <p>12 reaching out to request something or discuss it, or how did</p> <p>13 this kind of start for you?</p> <p>14 A The context of the call was to retain us to do a site</p> <p>15 inspection for the particular project at hand.</p> <p>16 Q Okay. Were you ever formally retained then?</p> <p>17 A We were, yes.</p> <p>18 Q Okay. And who retained you?</p> <p>19 A Red River State Bank.</p> <p>20 Q Were you formally retained around that same time period</p> <p>21 you were talking about or...</p> <p>22 A I believe we had a proposal that was dated April 4th I</p> <p>23 believe. And on that proposal we gave two different</p> <p>24 options, one to do a full and complete punch list type</p> <p>25 report and a second option to do more of a cursory overview</p>
Page 19	Page 21
<p>1 Have you provided these services for Red River State Bank</p> <p>2 before?</p> <p>3 A I have not.</p> <p>4 Q Do you have any connection to Red River State Bank that</p> <p>5 would influence your opinions in this matter?</p> <p>6 A No.</p> <p>7 Q Has the Vogel Law Firm ever retained you to provide</p> <p>8 such expert services?</p> <p>9 A No.</p> <p>10 Q Do you have any connection to the Vogel Law Firm that</p> <p>11 would influence your opinions in this case?</p> <p>12 A No.</p> <p>13 Q Have you ever been hired by Jesse Craig, The Ruins LLC,</p> <p>14 or any Craig entities before?</p> <p>15 A I have not.</p> <p>16 Q Do you have any connection to Jesse Craig, The Ruins,</p> <p>17 or any Craig entities that are influencing your opinions?</p> <p>18 A I do not.</p> <p>19 Q Have you ever been retained by the Dakota Bankruptcy</p> <p>20 Firm, Mr. VerStandig, who you can see on the screen, or Ms.</p> <p>21 Cathcart, who is down at the other table?</p> <p>22 A I have not, no.</p> <p>23 Q Okay. Any connection with any of the that would</p> <p>24 influence your opinion in this case?</p> <p>25 A No.</p>	<p>1 of the project status. And the option one was selected to</p> <p>2 do a full and complete report.</p> <p>3 Q Were you compensated for that?</p> <p>4 A We were, yes.</p> <p>5 Q How much have you been paid to date approximately?</p> <p>6 A Just let me walk through this a little bit as we speak.</p> <p>7 I believe the initial report was for a lump sum of \$12,500.</p> <p>8 And then additional services after that were paid hourly or</p> <p>9 billed hourly. And I believe were somewhere in the mid-</p> <p>10 twenties for total compensation, twenty-thousands.</p> <p>11 Q So the initial report was a lump sum and it's been</p> <p>12 hourly since?</p> <p>13 A Correct, yes.</p> <p>14 Q Okay. Is your compensation in this matter at all</p> <p>15 contingent or dependent on the outcome of this case?</p> <p>16 A It is not.</p> <p>17 Q Has your compensation that you've received in any way</p> <p>18 affected your opinions?</p> <p>19 A It has not.</p> <p>20 MR. HUSHKA: Your Honor, at this time I would</p> <p>21 offer Mr. Gehertz as an expert in the field of commercial</p> <p>22 construction and supervision.</p> <p>23 THE COURT: Any objection?</p> <p>24 MR. VERSTANDIG: Permission to voir dire.</p> <p>25 THE COURT: You may.</p>

<p style="text-align: right;">Page 22</p> <p>1 MR. VERSTANDIG: Thank you</p> <p>2 VOIR DIRE EXAMINATION OF MATTHEW GEHRTZ</p> <p>3 BY MR. VERSTANDIG:</p> <p>4 Q Mr. Gehrtz, are you aware of the relief that is being</p> <p>5 sought by Red River State Bank at this hearing?</p> <p>6 A Can you expand on the explanation of what that is?</p> <p>7 Q Sure. Do you know what it is that Red River State Bank</p> <p>8 is asking the Court to order at the end of this hearing?</p> <p>9 A I believe I do.</p> <p>10 Q Okay. Could you share what that is?</p> <p>11 A I believe that it is the position of the bank to put it</p> <p>12 into bankruptcy. I guess -- I'm sorry, I don't know the</p> <p>13 terminology behind that.</p> <p>14 Q That's quite all right. Is it your understanding that</p> <p>15 the bank would like to gain possession of The Ruins project</p> <p>16 for some combination of events that may follow this hearing?</p> <p>17 A I don't know that for sure. I haven't had those</p> <p>18 specific discussions with them.</p> <p>19 Q Okay. Have you ever talked to the bank or any officer</p> <p>20 or agent of the bank, Mr. Aarestad or anyone else, about</p> <p>21 whether or not Gehrtz Construction would be hired to do work</p> <p>22 if the bank were to take over The Ruins project?</p> <p>23 A We haven't specifically talked to that to my memory.</p> <p>24 Certainly not in any official capacity.</p> <p>25 Q Well, would there have been any unofficial discussions</p>	<p style="text-align: right;">Page 24</p> <p>1 determine what that number actually is. I don't know for</p> <p>2 sure if it's north of a million dollars. That seems high to</p> <p>3 me if the total cost of construction is around \$1.7 million</p> <p>4 in our estimation.</p> <p>5 Q And then six to eight percent of a number north of \$1</p> <p>6 million. Yeah.</p> <p>7 A That would be correct. Yeah. Sorry.</p> <p>8 Q We can agree 1.7 is north of a million, right? And you</p> <p>9 do own part of the company, correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. so you do stand to economically benefit if the</p> <p>12 bank is given control of this project and Gehrtz is then</p> <p>13 hired to finish the work, right?</p> <p>14 A That would be correct.</p> <p>15 Q Okay. Have you ever been denied qualification as an</p> <p>16 expert witness in any arbitration, state court, federal</p> <p>17 court, foreign court, native American court, moot court?</p> <p>18 Any court?</p> <p>19 A No, I have not.</p> <p>20 Q Okay.</p> <p>21 MR. VERSTANDIG: Your Honor, we would object on</p> <p>22 the limited basis that it appears the witness is</p> <p>23 economically incentivized based upon the testimony offered</p> <p>24 today. We don't object to his qualifications. He seems to</p> <p>25 be very well-qualified. And it would be the monetary</p>
<p style="text-align: right;">Page 23</p> <p>1 about what a good job you can do once it's in your hands?</p> <p>2 A I guess not specifically, but personally I naturally</p> <p>3 just go to as a business owner what it might look like. But</p> <p>4 there's been no formal discussion or informal discussion</p> <p>5 about taking the project over.</p> <p>6 Q Okay. The report you put together does include some</p> <p>7 fees that would be charged if Gehrtz were to do work,</p> <p>8 correct?</p> <p>9 A The fees would be included if anybody were to complete</p> <p>10 the project. So if it's in the capacity of a third party,</p> <p>11 someone would need to be paid to finish the project I guess</p> <p>12 is kind of how my perspective is on that, whether it's us or</p> <p>13 it's a third party.</p> <p>14 Q Without getting into what I'm sure Mr. Hushka is going</p> <p>15 to ask you about in some detail, broadly speaking if Gehrtz</p> <p>16 were to take over this project, approximately how much would</p> <p>17 it stand to make in fees?</p> <p>18 A It's anywhere between six and eight percent is</p> <p>19 typically what we would charge on a project as a</p> <p>20 construction manager.</p> <p>21 Q So I want to be careful not to ask you the cost of</p> <p>22 completion because I, you know, object to that. But six to</p> <p>23 eight percent of a number that's likely north of a million</p> <p>24 dollars, right?</p> <p>25 A I guess aside from doing the math, I would have to</p>	<p style="text-align: right;">Page 25</p> <p>1 component that is problematic.</p> <p>2 THE COURT: I am going to overrule because your</p> <p>3 concerns relate to the weight of the testimony rather than</p> <p>4 the admissibility.</p> <p>5 MR. VERSTANDIG: Thank you, Your Honor.</p> <p>6 THE COURT: Approved as an expert. And you may</p> <p>7 proceed.</p> <p>8 MR. HUSHKA: All right. Thank you, Your Honor.</p> <p>9 RESUMED DIRECT EXAMINATION OF MATTHEW GEHRTZ</p> <p>10 BY MR. HUSHKA:</p> <p>11 Q I guess maybe just put a button on what Mr. VerStandig</p> <p>12 asked you, Mr. Gehrtz. You have not been asked to complete</p> <p>13 construction in this project, have you?</p> <p>14 A That's correct, we have not.</p> <p>15 Q And you haven't had any formal or informal discussions</p> <p>16 with whether or not you would take over this project or</p> <p>17 whether you'd even be available to take over this project?</p> <p>18 A Correct.</p> <p>19 Q Okay. Mr. Gehrtz, I want to get to your expert</p> <p>20 opinions then since we have you qualified.</p> <p>21 MR. HUSHKA: And if I could have the Court pull up</p> <p>22 ECF 60-1, Exhibit A.</p> <p>23 BY MR. HUSHKA:</p> <p>24 Q And please let me know when you see that on the screen</p> <p>25 in front of you, sir.</p>



<p style="text-align: right;">Page 26</p> <p>1 A I can see it.</p> <p>2 Q Okay. Do you recognize that document?</p> <p>3 A I do, yeah.</p> <p>4 Q What is that document?</p> <p>5 A This was our initial report that we were hired to</p> <p>6 complete for the project.</p> <p>7 Q If we scroll to the next page, at the very bottom of</p> <p>8 what's been designated page one on the report, do you see a</p> <p>9 signature?</p> <p>10 A I do.</p> <p>11 Q Is that your signature?</p> <p>12 A Yes, it is.</p> <p>13 Q By signing this document, are you attesting to the</p> <p>14 opinions that are expressed in this report?</p> <p>15 A Yes.</p> <p>16 Q Okay. To form the opinions in this report, did you</p> <p>17 make any observations?</p> <p>18 A We did.</p> <p>19 Q What observations did you undertake?</p> <p>20 A We made visual observations as we completed our site</p> <p>21 inspection.</p> <p>22 Q Site inspection of what?</p> <p>23 A Of The Ruins project.</p> <p>24 Q Okay. Down in Watertown, South Dakota?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 we used the same essentially schedule values on the sworn</p> <p>2 construction statement for each individual bid packages. So</p> <p>3 we made assumptions on what might be contained in each one</p> <p>4 of those particular packages to arrive at our estimated</p> <p>5 percentage complete.</p> <p>6 Q When you say sworn construction statement, was that a</p> <p>7 document?</p> <p>8 A That was a document, yes.</p> <p>9 Q Was that a document to the best of your knowledge that</p> <p>10 was provided by Craig Development or Craig Holdings or some</p> <p>11 Craig entity?</p> <p>12 A That's my understanding.</p> <p>13 Q And then what was all depicted in that document?</p> <p>14 A It had a list of the subcontracts line by line of like</p> <p>15 -- it would be waterproofing and it would be CMU block and</p> <p>16 it would be general work and labor, carpentry. Items like</p> <p>17 that that, that if you continue going down the report, that</p> <p>18 table of contents is laid out in that same structure.</p> <p>19 Q So essentially you took the format that had been</p> <p>20 provided by the Craig entities and you used that to adapt</p> <p>21 your report?</p> <p>22 A Correct. Yeah.</p> <p>23 Q Okay. Can you describe for me briefly -- and we'll get</p> <p>24 into it a little bit more obviously as we go. But just kind</p> <p>25 of give an overview of your process of how you reached the</p>
<p style="text-align: right;">Page 27</p> <p>1 Q When you say a site inspection, you went down</p> <p>2 personally and walked around and checked everything out?</p> <p>3 A Correct. We went down. We completed an inspection.</p> <p>4 It took approximately the entire day to walk through the</p> <p>5 entire building. And we photo documented everything that we</p> <p>6 saw and we prepared this report, which I think is fairly</p> <p>7 lengthy.</p> <p>8 Q You said you took photos?</p> <p>9 A We did, yes.</p> <p>10 Q Any approximation of how many photos?</p> <p>11 A I would have to say more than a thousand. I don't know</p> <p>12 an exact number, but a lot of photos.</p> <p>13 Q Okay. Are there photos in this report?</p> <p>14 A There are, yes.</p> <p>15 Q Do those photos truly and accurately depict and</p> <p>16 represent what you observed during your site inspection?</p> <p>17 A Yes, they do.</p> <p>18 Q Did you make any assumptions in drafting this report?</p> <p>19 A We did, yeah.</p> <p>20 Q What were some of those assumptions?</p> <p>21 A Some of the assumptions that we had to make were what</p> <p>22 scopes of work contained in each of the particular bid</p> <p>23 packages that would be on the sworn construction statement.</p> <p>24 That was basically the document that helped us formulate the</p> <p>25 table of contents and the structure for this report, is that</p>	<p style="text-align: right;">Page 29</p> <p>1 opinions that you expressed in this report.</p> <p>2 A Initially doing the site visit, we tried to take as</p> <p>3 many photos and tried to organize a structure that made</p> <p>4 sense as we walked through the building. We didn't have an</p> <p>5 accurate floor plan at that time, so we made some</p> <p>6 assumptions on which room numbers were associated with which</p> <p>7 rooms. We structured a folder system within our -- we have</p> <p>8 a software, an online software that we use. So we take a</p> <p>9 photo and it automatically puts it on the software. So it</p> <p>10 helps organize all of the documentation. So we organized.</p> <p>11 Each room had its own folder. And so then we had photos</p> <p>12 that are associated with each room. And then as we were</p> <p>13 taking photos, we assigned what we assumed would be a</p> <p>14 particular trace that would be responsible for completing</p> <p>15 that particular task.</p> <p>16 So the way that we view it as a construction manager,</p> <p>17 it was essentially a punch list, which is a list of things</p> <p>18 that needed to be complete. And then in order for a punch</p> <p>19 list to be effective, you need to assign a subcontractor or</p> <p>20 a bid package that needs to be responsible to complete that</p> <p>21 package. And so that's how we've structured and assigned</p> <p>22 what we felt -- if a typical scope of work is X for a</p> <p>23 subcontract and we in our observations felt that it was 80</p> <p>24 percent complete, that's kind of how we've established our</p> <p>25 report structure.</p>



<p style="text-align: right;">Page 30</p> <p>1 Q Sir, you used the pronoun we a number of times in that.</p> <p>2 Are you speaking in the royal we, or was there a team that</p> <p>3 went with you down to the site?</p> <p>4 A For this initial site, I had a team of three</p> <p>5 individuals plus myself just due to the essence of trying to</p> <p>6 complete the entire report. And then I put together the</p> <p>7 report personally and compiled everything. So I had a team</p> <p>8 helping me take all the photos and organize things. But</p> <p>9 then I personally put the report together myself.</p> <p>10 Q Okay. So you were the leader of the team?</p> <p>11 A Yes, I was.</p> <p>12 Q Okay. Is it typical in the construction industry for a</p> <p>13 project of this size for an inspection to use a team of that</p> <p>14 nature?</p> <p>15 A I would say yes.</p> <p>16 Q Are you confident in your team that they took true and</p> <p>17 accurate renderings and pictures and observations?</p> <p>18 A Absolutely, yes.</p> <p>19 Q Is there anything that you believe you didn't</p> <p>20 personally observe that could have affected or misconstrued</p> <p>21 your opinions in this case?</p> <p>22 A No.</p> <p>23 MR. HUSHKA: All right. If the Court can proceed</p> <p>24 to the next page of the report.</p> <p>25 BY MR. HUSHKA:</p>	<p style="text-align: right;">Page 32</p> <p>1 Q And did you form an opinion for how much of this work</p> <p>2 had been finished as of the time of your inspection?</p> <p>3 A We did, yeah.</p> <p>4 Q And I guess to circle back around, I don't know if we</p> <p>5 have it in yet. But when did you inspect The Ruins on this</p> <p>6 first initial inspection?</p> <p>7 A I think if you scroll up on the document, I believe</p> <p>8 that it was April 17th of 2024 is when we were on site for</p> <p>9 the particular visit.</p> <p>10 Q And are you aware if there's been any additional</p> <p>11 construction done to the project since that April 17th, 2024</p> <p>12 date?</p> <p>13 A We performed a follow-up inspection in September of</p> <p>14 2024 to determine if any significant work had been</p> <p>15 completed. And we observed that there was no significant --</p> <p>16 and I believe there's additional exhibits of that. And then</p> <p>17 we did a third visit to determine what is the cost to</p> <p>18 complete in addition to see if any additional work had been</p> <p>19 completed.</p> <p>20 Q So am I to understand that the report that we're going</p> <p>21 to go through and the percentage complete is still what you</p> <p>22 understand the status of The Ruins today?</p> <p>23 A I would say yes.</p> <p>24 MR. HUSHKA: Let me go back down to the actual</p> <p>25 opinion section, Sharon. Thank you.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q Is this kind of the breakdown that you've discussed or</p> <p>2 briefly referenced before?</p> <p>3 A Yes, it is.</p> <p>4 Q Okay. And this breakdown you indicated was taken from</p> <p>5 the sworn construction statement provided?</p> <p>6 A Correct.</p> <p>7 Q Okay. I understand it may be slightly tedious, but I</p> <p>8 think it may be helpful for the Court if the Court will</p> <p>9 allow for us to kind of go through each of these subparts to</p> <p>10 explain and identify the work that has been performed and</p> <p>11 still needs to be performed. Is that something you can</p> <p>12 provide for us?</p> <p>13 A It is.</p> <p>14 Q All right. We can proceed to the next page of the</p> <p>15 report then. And what is the first category in this report?</p> <p>16 A The first category is concrete waterproofing and</p> <p>17 insulation.</p> <p>18 Q What is that?</p> <p>19 A So our assumption would be that concrete waterproofing</p> <p>20 was not observable because it was for foundation. However,</p> <p>21 insulation, we felt like that was building envelope and</p> <p>22 insulation within the walls of the building. In addition to</p> <p>23 that, basically sealing up any penetration on the exterior</p> <p>24 of the building would be how I view insulation. That's why</p> <p>25 we categorized that under this particular line item.</p>	<p style="text-align: right;">Page 33</p> <p>1 BY MR. HUSHKA:</p> <p>2 Q What was the opinion for the percentage complete of</p> <p>3 concrete and waterproofing?</p> <p>4 A So my assumption was that the entire building envelope</p> <p>5 insulation was completed, obviously because it's behind</p> <p>6 sheetrock and vapor barrier. However, it appeared that</p> <p>7 there was insulation missing around the A/C sleeves, which</p> <p>8 is the air conditioning sleeve, and louvers and other</p> <p>9 miscellaneous penetrations through the building which in my</p> <p>10 experience would typically fall under the insulation scope</p> <p>11 of work.</p> <p>12 Q Were those just things that hadn't been completed or</p> <p>13 were those deficiencies with what had been done?</p> <p>14 A Most of what I observed was yet to be complete. But it</p> <p>15 did appear that there were some deficiencies with spray</p> <p>16 foam. Overspray under the brick. Just minor things that</p> <p>17 just needed to be corrected.</p> <p>18 Q And you said those would need to be corrected. They're</p> <p>19 not something that could just kind of be ignored?</p> <p>20 A In my opinion they should be corrected.</p> <p>21 Q Okay. What would be required to complete the -- to</p> <p>22 correct those from a cost and materials or labor standpoint?</p> <p>23 A I think cost and materials is fairly minor. And I</p> <p>24 think maybe two to three days of work for this particular</p> <p>25 package would complete.</p>

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<p>1 Q That would be two or three additional days to --</p> <p>2 construction is one and then the remediation would be an</p> <p>3 additional two or three days?</p> <p>4 A For this particular package, remediation is maybe a</p> <p>5 day. Not a significant one on this particular one.</p> <p>6 Q Fair enough. If I can direct your attention to the</p> <p>7 bottom of page 3. Do you see a section titled gypcrete?</p> <p>8 A Yes.</p> <p>9 Q What is gypcrete?</p> <p>10 A Gypcrete is a subfloor overlay. It's typically</p> <p>11 installed for minimizing sound transfer between floors in</p> <p>12 residential application. It also provides a level of fire</p> <p>13 rating to the floor system.</p> <p>14 Q How much of that work had been completed?</p> <p>15 A We observed that all the gypcrete had been placed and</p> <p>16 completed. So our assumption was that it's 99 percent</p> <p>17 complete. Very minor items that needed to be addressed.</p> <p>18 Q You said some items that needed to be addressed though?</p> <p>19 A We observed that there were some bubbling on the</p> <p>20 surface of the gypcrete. We also observed, as you can see</p> <p>21 in the photo to the right, that there in some areas must</p> <p>22 have been a hole in the substrate which would allow some of</p> <p>23 the gypcrete to drip down through until it got hard enough</p> <p>24 to set up. They are fairly minor deficiencies, but I feel</p> <p>25 like they might have been an issue when placing flooring on</p>	<p>1 Q I didn't ask for the previous one, but for the concrete</p> <p>2 waterproofing and insulation, what kind of crew would be</p> <p>3 used to both finish that or remediate the deficiencies that</p> <p>4 we talked about?</p> <p>5 A Typically I would see an insulation subcontractor that</p> <p>6 would be involved with that particular package.</p> <p>7 Q If we can proceed to the next page. There's a category</p> <p>8 entitled CMU block. Can you explain for the Court what that</p> <p>9 is?</p> <p>10 THE COURT: Can I interrupt with a question?</p> <p>11 MR. HUSHKA: Certainly.</p> <p>12 THE COURT: When you're soliciting information</p> <p>13 about what type of subcontractor would be needed to do the</p> <p>14 repair, is that also included in part of this report or are</p> <p>15 you providing additional information to me that's not in a</p> <p>16 report?</p> <p>17 MR. HUSHKA: That's not in the report.</p> <p>18 THE COURT: Thank you. Okay.</p> <p>19 BY MR. HUSHKA:</p> <p>20 Q So the question was, the next section is CMU block; can</p> <p>21 you explain for the Court what that category is or what was</p> <p>22 assessed?</p> <p>23 A CMU block is concrete masonry unit. And as you can see</p> <p>24 in the photos, it appears that the entire first floor</p> <p>25 exterior was concrete masonry unit. And so one of the</p>
Page 35	Page 37
<p>1 there for adhesive to properly bond to the flooring membrane</p> <p>2 and things like that. So minor items, but felt like there</p> <p>3 were deficiencies that needed to be corrected.</p> <p>4 Q And those again would need to be corrected at some</p> <p>5 point?</p> <p>6 A Our opinion would be yes.</p> <p>7 Q What kind of crew or time and materials are we talking</p> <p>8 for those remedies?</p> <p>9 A I would say less than -- I would say a day per floor to</p> <p>10 address the gypcrete. So two days total for that. And</p> <p>11 minor equipment needed for that. Just to sand the floor</p> <p>12 down essentially what that would be.</p> <p>13 Q What kind of sub or trade would perform that work</p> <p>14 generally?</p> <p>15 A typically what I would see is a flooring subcontractor</p> <p>16 to do that trade. And I'm going to get a little bit into</p> <p>17 the details on this. And the reason why is because if --</p> <p>18 what I've seen in the past, if a gypcrete subcontractor is</p> <p>19 requested to do that, it tends to not be corrected in the</p> <p>20 manner that is necessary for a flooring subcontractor to lay</p> <p>21 floor and glue on there. So we like to have a flooring</p> <p>22 subcontractor come in, prep the surface that they need to</p> <p>23 see for their particular materials so that warranties and</p> <p>24 installation patterns are done properly and then it's</p> <p>25 corrected.</p>	<p>1 assumptions we made within this package is that typically</p> <p>2 you would see the subcontract that is required to install</p> <p>3 the CMU block also provides a waterproofing membrane on the</p> <p>4 face of that. And so that was our assumption that that</p> <p>5 spray-applied weather barrier was included within this</p> <p>6 particular scope of work. And the reason that is important</p> <p>7 to mention is because we felt like on the exterior where</p> <p>8 there was not masonry brick installed yet, we could see</p> <p>9 openings, we could see penetrations through the CMU block,</p> <p>10 which as you can see in these first few photos showed</p> <p>11 significant signs of moisture penetration within the</p> <p>12 building on the first floor.</p> <p>13 Q Are those deficiencies in your opinion?</p> <p>14 A They are.</p> <p>15 Q Would those need to be corrected?</p> <p>16 A Yes.</p> <p>17 Q What would need to be done to correct those</p> <p>18 deficiencies?</p> <p>19 A In my opinion we would need to have the control joints</p> <p>20 -- which periodically I would say it's every 20 or so feet</p> <p>21 there should be a joint that allows for building movement</p> <p>22 and separation and minor movements so that the block doesn't</p> <p>23 crack. All of those would need to be sealed prior to the</p> <p>24 spray applied. Because the spray-applied membrane is acting</p> <p>25 as kind of a continuous barrier over the face of the wall.</p>

<p style="text-align: right;">Page 38</p> <p>1 And if there's any gap in the wall, it can't bridge that</p> <p>2 gap. And so providing some sort of a caulking or a sealant</p> <p>3 or some sort of item that would fill that gap is important</p> <p>4 prior to the spray-applied membrane. And so all of that</p> <p>5 would need to be done. In addition, if you can scroll down</p> <p>6 just a little bit more on this particular page, we noticed</p> <p>7 that the first floor, which was a precast plank, extended to</p> <p>8 the exterior of that wall, which is typical. However,</p> <p>9 there's numerous gaps in that precast plank that at this</p> <p>10 point is allowing moisture into the building. So all of</p> <p>11 that would need to be sealed and it would need to be either</p> <p>12 resprayed or some sort of additional membrane would need to</p> <p>13 be put over the top of that so that there is not any gaps in</p> <p>14 that exterior wall.</p> <p>15 Q And so in addition to those remediation efforts,</p> <p>16 there's also about 25 percent of the CMU block would still</p> <p>17 need to be completed as well? Is that a fair reading of the</p> <p>18 report?</p> <p>19 A Our assumption was that there were some walls on the</p> <p>20 first floor that still needed to be completed within what we</p> <p>21 felt was a common space. At that time we didn't have an</p> <p>22 accurate plan that noted those areas. So our assumption was</p> <p>23 that there was some work still that needed to be done on the</p> <p>24 first floor on the inside of the building.</p> <p>25 Q What crew or crews would be needed to complete the CMU</p>	<p style="text-align: right;">Page 40</p> <p>1 Q If we can go to the next page, the general W and L</p> <p>2 rough carpentry labor. Do you see that section?</p> <p>3 A I do.</p> <p>4 Q What is that?</p> <p>5 A This would be the package that typically does the</p> <p>6 majority of the framing on the building, all the wood</p> <p>7 framing. They would also do the installation of all the</p> <p>8 windows. They would also do the installation of the Tyvek</p> <p>9 weather barrier on the exterior of the building. And then</p> <p>10 any other miscellaneous related items such as miscellaneous</p> <p>11 metals could fall within this package from a labor</p> <p>12 standpoint. So this package is a fairly large package in</p> <p>13 terms of mixed use building construction.</p> <p>14 Q About 25 percent of this item is still to be completed?</p> <p>15 A That was our best assumption. Based on not knowing</p> <p>16 specifically what all was in this particular package, we had</p> <p>17 to make some assumptions to get to that point.</p> <p>18 Q It looks like there were some deficiencies noted as</p> <p>19 well.</p> <p>20 A As we walked through the building, we noted that there</p> <p>21 were quite a few windows that had signs of moisture</p> <p>22 penetration. And so you can see that we've noted between 45</p> <p>23 and 50 with some sort of moisture penetration on the north</p> <p>24 and the east elevations of the building. 10 to 15 windows</p> <p>25 were either broken or missing some sort of glass. 12 to 17</p>
<p style="text-align: right;">Page 39</p> <p>1 block work plus the remediation work?</p> <p>2 A That would be typically either a mason or some trades</p> <p>3 have a spray-applied weather barrier division. So either a</p> <p>4 mason or a subcontractor that specializes in spray-applied</p> <p>5 barrier.</p> <p>6 Q How long approximately to finish this or the</p> <p>7 remediation efforts?</p> <p>8 A I would estimate maybe a week to two weeks depending on</p> <p>9 the actual scope that's required on the first floor for the</p> <p>10 CMU.</p> <p>11 Q We can scroll to the next page. There's a section</p> <p>12 titled miscellaneous metals. Can you describe what's</p> <p>13 assessed in there?</p> <p>14 A Miscellaneous metals would be just non-structural</p> <p>15 related steel or metal. Items like bollards, roof access</p> <p>16 ladder, railings in the stairwells, items that are just kind</p> <p>17 of miscellaneous in nature. And we observed that the</p> <p>18 material was on site but had not been installed yet.</p> <p>19 Q Any deficiencies noted?</p> <p>20 A Not for this particular package other than the fact</p> <p>21 that it was not installed, was not complete.</p> <p>22 Q And what crew or trade would be needed to finish that</p> <p>23 last 20 percent work on this?</p> <p>24 A This one typically is completed by a general work and</p> <p>25 labor contractor.</p>	<p style="text-align: right;">Page 41</p> <p>1 of these windows were -- in addition to those 12 to 17</p> <p>2 windows were either broken or malfunctioning latches or</p> <p>3 cranks so that you couldn't actually close the window</p> <p>4 completely and secure it. And six to ten of those windows,</p> <p>5 the frames appeared to be either warped, not level, or some</p> <p>6 other scenario that wasn't causing it to function properly.</p> <p>7 Q Are those deficiencies that would need to be remedied</p> <p>8 in your opinion?</p> <p>9 A Yes, yes.</p> <p>10 Q What kind of crew would be needed, or crew or trades</p> <p>11 would be needed to provide those remediation efforts?</p> <p>12 A I would say a general work and labor contractor would</p> <p>13 be necessary for these. The other potential would be a</p> <p>14 supplier for the windows depending on if their replacement</p> <p>15 windows are on site or not or if additional replacement</p> <p>16 windows needed to be ordered. So it would be a window</p> <p>17 supplier as well in addition to that.</p> <p>18 Q Did you see any replacement windows on site?</p> <p>19 A I believe if I recall there were a few on the first</p> <p>20 floor. I don't recall the number of how many were there.</p> <p>21 Q Enough to replace all the windows that you thought were</p> <p>22 affected?</p> <p>23 A my opinion, no, there was not enough there.</p> <p>24 Q All right. If we could proceed to the next page and</p> <p>25 the next section entitled General W and L Finish Carpentry</p>

<p style="text-align: right;">Page 42</p> <p>1 Labor. What is this?</p> <p>2 A This would be general carpentry that's associated with</p> <p>3 finishes within the building. So doors and frames,</p> <p>4 potentially cabinets. Things of that nature that are</p> <p>5 supplied for this particular subcontractor to install.</p> <p>6 Q And your report says 25 percent of the work hadn't been</p> <p>7 completed yet for this?</p> <p>8 A That was our assumption, yeah, based on what we</p> <p>9 typically see within this package and what we felt was</p> <p>10 remaining work completed on the site.</p> <p>11 Q But you did note deficiencies with what had been</p> <p>12 completed.</p> <p>13 A We did, yes.</p> <p>14 Q Can you kind of outline or give a high-level overview</p> <p>15 of that for the Court?</p> <p>16 A Yeah. We noticed that there were several unit entry</p> <p>17 doors that were damaged that most likely needed to be</p> <p>18 replaced. Number of units which had, you know, just the</p> <p>19 back sides of the bifold doors and the closets had been</p> <p>20 ripped down just to fit properly. It felt like that was a</p> <p>21 deficiency that should be corrected.</p> <p>22 The third note on the potential deficiencies were</p> <p>23 observed wood base installed prior to flooring with no gaps</p> <p>24 in substrate between the bottom of the base.</p> <p>25 Typically what I see is that the flooring goes in first</p>	<p style="text-align: right;">Page 44</p> <p>1 A We would have, yeah.</p> <p>2 Q If we can proceed to the next page and the next</p> <p>3 category, Millwork-Cabinets. Can you described for the</p> <p>4 Court what is assessed in there?</p> <p>5 A This would be the supply of any kitchen cabinets</p> <p>6 throughout all the residential units. And as we were going</p> <p>7 through and doing our observations, we noticed that there</p> <p>8 were a handful of cabinets that were not installed, either</p> <p>9 missing or damaged. So I think I noted on the report that</p> <p>10 on the second floor there was one unit where the cabinets</p> <p>11 were not completed. And you can see that in that first</p> <p>12 photo on the left. On the third floor there were 17 units</p> <p>13 that were missing at least one cabinet and four units that</p> <p>14 appeared to have more that were missing. So I would say</p> <p>15 overall to get to our assumption of what was completed, we</p> <p>16 did a count on the number of units and how many units didn't</p> <p>17 have cabinets installed fully and arrived at our assumption,</p> <p>18 our percentage.</p> <p>19 Q When you say missing, did you observe them on site and</p> <p>20 they just hadn't been installed yet, or were they totally</p> <p>21 absent?</p> <p>22 A Most of the cabinets were on site that we observed. I</p> <p>23 didn't do an actual count of the individual units, but it</p> <p>24 appeared that most of the materials was there. It had just</p> <p>25 not been installed.</p>
<p style="text-align: right;">Page 43</p> <p>1 and then the base goes on top of the floor so that you have</p> <p>2 a nice -- basically you're hiding the gap where the floor</p> <p>3 meets the wall. It didn't appear that that was able to be</p> <p>4 accomplished in this case. So it's more of an aesthetic</p> <p>5 deficiency in my opinion than really a functionality</p> <p>6 deficiency, but it's something to note.</p> <p>7 Q If this is going to be sold and marketed as a high-end</p> <p>8 apartment complex, are those the types of finishes, the lack</p> <p>9 of gap, that you would expect to see?</p> <p>10 A I would not like to see that in a high-end apartment</p> <p>11 personally.</p> <p>12 Q So you're saying that these are deficiencies that would</p> <p>13 need to be remedied?</p> <p>14 A Yes.</p> <p>15 Q What crew or subs or trades are required to finish this</p> <p>16 work?</p> <p>17 A General work and labor, finish carpentry would be able</p> <p>18 to handle all of those items in combination with a flooring</p> <p>19 subcontractor. But I think that's another package later on.</p> <p>20 Q Okay. You know that there were some doors that were</p> <p>21 damaged. Were there replacements on site that you observed?</p> <p>22 A I don't recall seeing any replacement doors during the</p> <p>23 time of our inspection.</p> <p>24 Q If you had, would you have properly noted it in your</p> <p>25 report?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q You mentioned that some had been damaged though as</p> <p>2 well?</p> <p>3 A Correct, yes.</p> <p>4 Q Were there replacement materials or replacements for</p> <p>5 ones that had been damaged? What would have to be done with</p> <p>6 those?</p> <p>7 A They would have to be replaced. I don't recall seeing</p> <p>8 any replacement pieces on the site.</p> <p>9 Q You noted some potential deficiencies as well?</p> <p>10 A There were a few areas that we noticed where the</p> <p>11 countertop was overhanging too far where it would prevent an</p> <p>12 appliance from being installed. You know, like a stove or</p> <p>13 something like that. And in some cases the countertop</p> <p>14 overhung the edge of the cabinet too far where a</p> <p>15 refrigerator wouldn't be able to get installed. So a couple</p> <p>16 different areas where the countertops would need to be</p> <p>17 adjusted to accommodate appliances as well.</p> <p>18 Q So when you say overhung, essentially they jutted out</p> <p>19 too far for you to be able to slide in a range or a</p> <p>20 refrigerator?</p> <p>21 A Correct. Correct. Typically -- to expand on that, in</p> <p>22 the installation of a range, the countertop should be flush</p> <p>23 with the edge of the cabinet so that it slips in there</p> <p>24 without any significant gap on either side of the range. In</p> <p>25 this case, we noted that there were a couple instances where</p>

<p style="text-align: right;">Page 46</p> <p>1 the countertop had overhung too far to prevent the range 2 from being installed.</p> <p>3 Q So would those deficiencies need to be remedied in your 4 opinion?</p> <p>5 A Yes.</p> <p>6 Q What crew or crew or trades would be needed to remedy 7 any of these deficiencies?</p> <p>8 A Again, I think a general work and labor contractor 9 would be able to handle all of those trades or all of those 10 scopes. In this case, I think it's fairly straightforward 11 with that scope.</p> <p>12 Q And same trade to complete the remaining 15 percent?</p> <p>13 A Yes.</p> <p>14 Q If we could proceed to the next page, Countertops- 15 Kitchen and Bathroom. Can you describe what that is?</p> <p>16 A My assumption is that this includes the supply and the 17 installation of the countertops specifically. And through 18 our observations we noticed that there were a couple units 19 on the second floor that the countertops were not installed. 20 Third floor, it appeared that all the countertops were in 21 place. And when I say 95 percent complete, I mean minor 22 punch list items. So nothing significant from that 23 perspective. And on the fourth floor we noted that one unit 24 was not complete but the other units appeared to be in 25 place. So only punch list related items on that.</p>	<p style="text-align: right;">Page 48</p> <p>1 any of the damages.</p> <p>2 A Correct, yeah.</p> <p>3 Q What trade or trades would be needed to finish 4 installing these units and what is needed to be done to 5 install them?</p> <p>6 A Yeah. I would say a general work and labor contractor 7 would set the vanity in place and then a plumber would need 8 to hook the sink up and get everything tied in. So multiple 9 trades for this particular package to complete.</p> <p>10 Q On the next page, Page 11, there's a section titled 11 Moisture Protection. Can you describe what that is?</p> <p>12 A Generally roughing membrane for both low and high roof 13 would fall under this package.</p> <p>14 Q And you thought this had been mostly done at 95 15 percent?</p> <p>16 A It appeared that all of the roofing membrane was in 17 place. The only items that we noted, just minor flashings 18 and rough cap, things like that that wasn't in place. But 19 primarily the majority of this was completed. At the time 20 of this report we didn't know that there was any additional 21 work on top of that. But it appears that there is a patio 22 or a rooftop patio in some sense here. Which is that were 23 the case, there is patio pavers that fall under this 24 particular scope. So we may have underestimated this a 25 little bit on our first report after now seeing the final</p>
<p style="text-align: right;">Page 47</p> <p>1 Q Were the countertops on site or were they still needing 2 to be brought in?</p> <p>3 A I believe they were on site. I don't recall 4 specifically though.</p> <p>5 Q Did you note any deficiencies for the countertops?</p> <p>6 A Other than the items that we talked through with the 7 cabinets, those would be the same deficiencies.</p> <p>8 Q The trades to complete this work or remedy those 9 deficiencies are?</p> <p>10 A Generally a work and labor contractor would perform 11 this package as well.</p> <p>12 Q Next page, section Bathroom Vanities. Can you describe 13 and explain that for the Court?</p> <p>14 A Bathroom vanities, appeared that this was a supplied 15 piece of millwork that in each bathroom was kind of a 16 complete package. Countertop, sink and cabinet was all part 17 of like a full vanity piece. And we observed that there 18 were a couple units that did not have the vanity installed. 19 It appeared that it was there, it just wasn't installed. 20 And a couple where there was some damage to the sink and to 21 the countertop that needed to be repaired. I don't recall 22 if there was any replacements for the damaged pieces. I 23 think when we took our counts, there was enough for one -- 24 or one in every location, but no additional.</p> <p>25 Q So enough to finish outfitting the units but not to fix</p>	<p style="text-align: right;">Page 49</p> <p>1 plan set at the end of the project. But at the time of our 2 inspection, we noted that the majority of the scope had been 3 completed just with minor items.</p> <p>4 Q What trades to finish that last five percent?</p> <p>5 A This would be a roofing contractor that would be needed 6 for that.</p> <p>7 Q Any deficiencies noted with what had been performed?</p> <p>8 A We noticed that there were a couple of soft spots on 9 the roofing area on that lower --</p> <p>10 Q What's a soft spot? Sorry to interrupt you.</p> <p>11 Q Soft spot would be if the substate below the membrane 12 was not -- typically you have a rigid insulation underneath 13 it that provides the thermal value. And then your membrane 14 is over the top of that. And in some cases if there is some 15 deterioration of that either coverboard or that insulation, 16 then you get a soft spot as you're walking across the roof. 17 So our opinion would be that some of those areas would 18 maybe need to be opened back up and replaced and then 19 patched in order to correct the deficiency.</p> <p>20 Q Roofing company do that work, or some other trade?</p> <p>21 A A roofing company would be doing that.</p> <p>22 Q You can proceed to the next page, the masonry section. 23 Can you describe what masonry was involved with The Ruins 24 development?</p> <p>25 A In this package we assumed that this was the face brick</p>

<p style="text-align: right;">Page 50</p> <p>1 on the face of the building. And we noticed that the east  2 elevation had -- I'm sorry, the north elevation needed to be  3 completed. There were three course of brick on the bottom,  4 but nothing else had been completed above that. And in  5 addition to that, none of the joints in the masonry that had  6 been installed were properly sealed at that time.  7 Q What type of trade? I'm assuming a mason to finish  8 this work or --  9 A Mason would be required to finish this trade.  10 Q Does this type of brick -- I know the local law firm  11 building is brick as well. And we require a sealant in our  12 brick. Is that required for all brick or would it be  13 required on this brick?  14 A I would say at all of the joints sealant would need to  15 be required. Typically after brick is installed and after  16 the mortar is cleaned off, you would acid wash it and clean  17 it so that it's presentable. That's a typical installation  18 process with brick.  19 Q That would be included in the 20 percent to be done or  20 is that --  21 A That would be included, yes.  22 Q Also still by a mason, or is that a different person?  23 A Correct.  24 Q Okay. Next section is Metal Siding/Metal Panels, on  25 Page 13. Do you see that?</p>	<p style="text-align: right;">Page 52</p> <p>1 A Either a failure of a fastener, which potentially could  2 be deterioration of substrate that it's being fastened into.  3 Just over time not being completed and being open to the  4 elements and wind and things like that could also  5 deteriorate. So just a number of different things that  6 could lead to the metal panel falling off or coming loose  7 from the building. It's not intended to be set by itself.  8 It's intended to be a system. Right? So I think just over  9 time having that not completed is causing some of that  10 deterioration in my opinion.  11 And then, yeah, just a couple of other items that we  12 noted, that there were some penetrations through the panels  13 that hadn't been completed and properly trimmed. And there  14 was some tape that was on the face of the panels, which we  15 weren't sure exactly why that was. But just a couple of  16 different deficiencies we felt needed to be addressed in  17 order to complete the package and finish the project.  18 Q You indicated that time can exacerbate these issues.  19 Is that correct?  20 A That's my opinion, yes.  21 Q All right. And so this inspection was in April of '24.  22 Do you believe that things would have improved or continued  23 to deteriorate from then?  24 A If no work had been completed since this inspection, my  25 opinion is that it would only further deteriorate from then</p>
<p style="text-align: right;">Page 51</p> <p>1 A Yes.  2 Q Can you explain to the Court what that section is?  3 A Metal siding is what you think it would be. It's the  4 skin that goes on the building over the top of the weather  5 barrier, the Tyvek layer. It appeared at the time of our  6 inspection that the north elevation had not been completed.  7 The east elevation had not been completed. There were some  8 soffit panels missing on the low roof on the west side of  9 the building. Flashing and metal returns typically are in  10 this package that would cover the brick that would return at  11 any door openings to basically seal the building in its  12 entirety. So a lot of those items had not yet been  13 completed at the time of our inspection.  14 Q I think you indicated 60 percent complete  15 approximately?  16 A That was our assumption assuming that two elevations  17 had been completed, materials were on site, and two  18 elevations still needed to be completed. So that was how we  19 arrived at our 60 percent.  20 Q You noted some deficiencies in what had been completed  21 though?  22 A We did. It appeared that there were some metal panels  23 that were falling off the building or detached.  24 Q What would cause a metal panel to fall off or detach  25 like that?</p>	<p style="text-align: right;">Page 53</p> <p>1 until now.  2 Q What trades or subs would be needed to both finish this  3 portion and correct these deficiencies that you noted?  4 A This would be a siding subcontractor. Typically a  5 contractor that specializes in installation of exterior  6 siding would be who I would expect to need to be finishing  7 this scope.  8 Q Proceed to the next page, Page 14. At the top there's  9 a section, Commercial Doors, Frames, Hardware. Can you  10 explain what that section reviewed?  11 A Yeah. This would be the supply of all the doors,  12 frames, and hardware that a general work and labor  13 contractor would finish the installation of. So we noted  14 that all the doors, frames, and hardware for the stair tower  15 still needed to be installed. Same for trash rooms. So  16 most of the unit entry doors and frames appeared to be hung,  17 but none of the hardware was finished. Common area doors,  18 we noticed that none of that work had been completed. So  19 all of that would still need to be supplied to then be  20 installed.  21 Q And you said need to be supplied. So materials weren't  22 on site for all this?  23 A Yeah, correct. I think there was additional doors.  24 You can see in the picture on the right that some doors were  25 leaned up against the doors and placed in certain areas.</p>



<p style="text-align: right;">Page 54</p> <p>1 But none of that had been installed. So our assumption was</p> <p>2 that some of that material may need to be installed. So we</p> <p>3 assumed that half the material was on site and available.</p> <p>4 Q And I don't know if I misheard you or not. You said</p> <p>5 general contractor to finish this work or a different sub?</p> <p>6 A General work and labor subcontractors, yeah.</p> <p>7 Q All right. Later down the page there is a Vinyl</p> <p>8 Windows Supply Only section. What is that?</p> <p>9 A So this would be the supply of the windows on the</p> <p>10 exterior of the building, the residential windows.</p> <p>11 Q And you thought 95 percent complete?</p> <p>12 A Yeah. We assumed that, I mean, obviously all the</p> <p>13 windows were installed with the exception to a handful of</p> <p>14 them that appeared to be used for stocking material in and</p> <p>15 out of the building. So just to get material up to upper</p> <p>16 floors. Those windows hadn't been installed yet. But on</p> <p>17 the more concerning side, we noticed that a number of</p> <p>18 windows had deficiencies that potentially would need to be</p> <p>19 replaced, may not be able to be fixed in place. So we noted</p> <p>20 this as 95 complete. Not fully completed, assuming that</p> <p>21 there would be some windows that would need to be supplied</p> <p>22 to correct the deficiencies that we observed.</p> <p>23 Q What sub or trades to either correct the deficiencies</p> <p>24 or finish the remaining work?</p> <p>25 A A window supplier for the actual material itself. For</p>	<p style="text-align: right;">Page 56</p> <p>1 drywall, taped, textured, and completed the finishing.</p> <p>2 Q Okay. You have 75 percent complete for that?</p> <p>3 A Correct.</p> <p>4 Q Would it be a drywall sub or trade then to finish that</p> <p>5 remaining 25 work?</p> <p>6 A That's correct, yeah.</p> <p>7 Q Any issues with the 75 percent that had been completed?</p> <p>8 A I think one of the biggest deficiencies that would</p> <p>9 impact this particular subcontractor was where there was any</p> <p>10 moisture penetration or repairs that would need to be worked</p> <p>11 on at the windows. It doesn't specifically relate to this,</p> <p>12 but it requires their work to patch and repair. So I would</p> <p>13 consider that a deficiency that impacts this particular</p> <p>14 subcontractor.</p> <p>15 Q All right. Next page, Page 16, Section, Carpet.</p> <p>16 Again, I think we can all guess what that is. But can you</p> <p>17 confirm our suspicions?</p> <p>18 A Yeah. This would be the carpet in the residential</p> <p>19 units is how we viewed this. So this would be like the</p> <p>20 rolled carpet that would go into the bedrooms and into the -</p> <p>21 - within the unit itself. So what we saw is that the common</p> <p>22 space of the unit, like the kitchen and the dining areas,</p> <p>23 was an LVT type floor. And the bedrooms was a --</p> <p>24 Q Can you explain that acronym for us, please?</p> <p>25 A It's a luxury vinyl tile or a thinner, more durable</p>
<p style="text-align: right;">Page 55</p> <p>1 this particular one, the labor we talked through with the</p> <p>2 general work and labor subcontractor as well.</p> <p>3 Q But you would need contributions from the supplier you</p> <p>4 believe?</p> <p>5 A Yeah. I believe we would, yes.</p> <p>6 Q All right. At the very bottom of the page there is a</p> <p>7 section Glass and Glazing. What is that?</p> <p>8 A This would be the aluminum frame systems on the first</p> <p>9 floor exterior as it goes out to the rooftop patio area.</p> <p>10 All of those areas appeared to be installed and complete.</p> <p>11 Q Just punch list items then?</p> <p>12 A Just minor punch list items, yeah.</p> <p>13 Q Next page, next section is Drywall on Page 15. I think</p> <p>14 we all know what that is, but can you confirm our</p> <p>15 assumptions?</p> <p>16 A Yeah. Drywall is the installation of the drywall on</p> <p>17 the walls. Typically in my experience this package includes</p> <p>18 the installation of the drywall, the supply of the drywall,</p> <p>19 and the finishing of the drywall. So tape, texture, and</p> <p>20 potentially painting. In a residential application</p> <p>21 typically that's all lumped into one just because there's</p> <p>22 efficiencies for them to do the whole scope of work as</p> <p>23 opposed to taking and giving the painting to a specific</p> <p>24 subcontractor. So my assumption in getting to the percent</p> <p>25 complete was that this subcontractor supplied, installed the</p>	<p style="text-align: right;">Page 57</p> <p>1 type floor. And sometimes it's either LVT, which is luxury</p> <p>2 vinyl tile, or LVP, which is luxury vinyl plank. So kind of</p> <p>3 interchangeable in my opinion. Carpet would be within the</p> <p>4 bedrooms. So it's a pad and the carpet that would be there.</p> <p>5 And what we observed was that second and third floor, none</p> <p>6 of the units had carpet in the bedrooms. And we didn't</p> <p>7 observe any materials stocked in those units, either. On</p> <p>8 the fourth floor we observed most of the carpet had been</p> <p>9 installed with exception to two units.</p> <p>10 Q When you said no carpeting installed or on site, was</p> <p>11 the carpet pad or anything down, or were these just</p> <p>12 completely bare plywood floor?</p> <p>13 A Yeah. We didn't notice any of that material on site at</p> <p>14 the time of our inspection.</p> <p>15 Q Flooring sub to complete this work, or someone else?</p> <p>16 A A flooring subcontractor would complete this package, y</p> <p>17 es.</p> <p>18 Q Next page, Page 17, section Painting/Staining. Again,</p> <p>19 we can make assumptions, but why don't you tell us?</p> <p>20 A So this painting and staining I think would apply to</p> <p>21 finishing the drywall, which in these rooms primarily</p> <p>22 through the residential areas would just be painting. I</p> <p>23 assume that staining was associated with any of the wood</p> <p>24 materials that was supplied on the project if they were not</p> <p>25 already prefinished. I don't know the makeup of how that</p>



<p style="text-align: right;">Page 58</p> <p>1 was created. But we made some assumptions that the entire  2 building was painted within this particular package. And we  3 noticed that there were quite a few areas that still needed  4 to be touched up. Primarily first floor had no paint  5 completed on it. Second, third and fourth floor was mostly  6 complete. There were some significant patching areas that  7 still needed to be finished, which is kind of how we arrived  8 at our percent complete.</p> <p>9 Q Earlier I believe you testified that your assumption  10 would be that whoever does the drywall generally would do  11 the painting. Accurate?</p> <p>12 A Typically that's how we have seen it in most cases.</p> <p>13 Q But the sworn report in this case had painting and  14 staining broken out separately from drywall.</p> <p>15 A Correct.</p> <p>16 Q And that was Craig -- or that was the Craig or Craig  17 entities that did it that way.</p> <p>18 A Correct.</p> <p>19 Q Okay. Any deficiencies noted or just a lack of  20 completion for this?</p> <p>21 A Lack of completion.</p> <p>22 Q Okay. And I think you indicated maybe drywall or any  23 other trades potentially involved to complete this? Could  24 it be a separate paint crew?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 60</p> <p>1 A You can get those yourself. You just need to  2 coordinate the installation with the post office.</p> <p>3 Q So it would require cooperation with the U.S. Postal.  4 A Correct, yeah.</p> <p>5 Q Next page, Page 19, Fire Extinguishers and Cabinets.  6 Can you explain that?</p> <p>7 A On each floor there is a box that contains a fire  8 extinguisher in case of an emergency. And we didn't observe  9 any of those installed and we did not observe any of the  10 material on site either for those materials.</p> <p>11 Q Despite not being installed, you still noted  12 deficiencies. What were those?</p> <p>13 A It appeared that they were higher than what you would  14 typically see for a fire extinguisher cabinet generally  15 speaking. It depends on the jurisdiction, but there is a  16 required maximum height so that if you're in a handicap or  17 accessibility requirements that need to be met from an  18 installation standpoint. I didn't look up the official --  19 the local codes to determine whether or not it was an issue.  20 Just we observed it being higher than what we typically see  21 in our experience.</p> <p>22 Q And if that's obviously a code issue, that would need  23 to be remedied potentially?</p> <p>24 A Correct. It would need to be lowered, which would  25 require a framer to come in and cut a new opening, drop the</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Next page, Page 18, Fill Nail Holes. Can you confirm  2 for us what that means?</p> <p>3 A Typically when you install wood base, there's nail  4 holes that need to be filled from an aesthetic standpoint.  5 So this would be generally completed by a general work and  6 labor carpenter or a finish carpenter.</p> <p>7 Q It looks like just punch lists on floors three and  8 four, but nothing on floor two?</p> <p>9 A Correct.</p> <p>10 Q And you already indicated that punch list carpenter to  11 come in to complete that work?</p> <p>12 A Yes.</p> <p>13 Q All right. Next section, still on this page, is Postal  14 Specialties, Bike Rack, Door Markers. What is that?</p> <p>15 A That would be mailboxes for the residential units. I  16 wasn't sure if there was actually door racks, door markers,  17 things like that. We didn't observe any of those. We also  18 didn't observe any postal specialties or mailboxes on site  19 or installed at the time of our inspection.</p> <p>20 Q Okay. General contractor or who would do that work?</p> <p>21 A Installation would typically be by a general contractor  22 or general or general working labor subcontractor. But they  23 would need to be supplied by a vendor of some sort.</p> <p>24 Q Post boxes, do those need to be supplied by the U.S.  25 Post Office or can you get those yourself?</p>	<p style="text-align: right;">Page 61</p> <p>1 hole, patch the opening, drywall repair, painting and  2 touchup as well.</p> <p>3 Q So multiple crews potentially.</p> <p>4 A Correct.</p> <p>5 Q And what about just the installation or the order and  6 mode? Who would do that?</p> <p>7 A If it was just installing the cabinet and the fire  8 extinguisher, that would be done typically by a general work  9 and labor subcontractor.</p> <p>10 Q Next page, Page 20, Ceiling Fans. I think we know what  11 that is. Can you confirm and just percentage done?</p> <p>12 A Yeah. It appeared that each bedroom had a ceiling fan  13 installed. We observed all the ceiling fans installed. It  14 was just minor punch list related items that would pertain  15 to this. Typically this would fall under an electrician.  16 They would either do the installation only or sometimes  17 supply and install. It just depends on how it's packaged  18 for this particular job.</p> <p>19 Q Electrician required then for those punch list issues?</p> <p>20 A Correct.</p> <p>21 Q Next page, Page 21, Closet Shelving. What is that?</p> <p>22 A Closet shelving would be in the bedrooms. Typically we  23 see wire shelving in these areas. We didn't observe any of  24 the shelving installed and we didn't observe any materials  25 on site. So we noted it as zero percent complete.</p>

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<p>1 Q So that would still have to be ordered conceivably and 2 delivered.</p> <p>3 A Correct. Correct.</p> <p>4 Q And then installed.</p> <p>5 A Correct.</p> <p>6 Q By whom?</p> <p>7 A Typically this could be done by a general work and 8 labor subcontractor. We sometimes see a specific trade come 9 in and do this by themselves. But I would say generally 10 speaking it could be done by a general work and labor 11 subcontractor.</p> <p>12 Q Next page, Page 22, Toilets and accessories.</p> <p>13 A Toilet and accessories. Obviously toilets within the 14 bathrooms. Accessories being toilet paper holders, grab 15 bars in the accessible units, things like that nature. We 16 observed that the toilets were on site. I did not take an 17 actual count of how many toilets were on site. But none of 18 them had been installed throughout the entire building. So 19 the --</p> <p>20 Q If they were on site, were they boxed, unboxed? Were 21 you able to observe what kind of condition they were in?</p> <p>22 A They were boxed. We didn't observe the condition of 23 the toilets.</p> <p>24 Q And construction, is it typical that there's some 25 breakage or damage to a large number of toilets when they're</p>	<p>1 We observed that on the second floor there were not any -- 2 and you can kind of go through the list here. A/C units 3 were missing throughout all floors or all the second floor. 4 Washer and dryers were missing from the units on the second 5 floor. The dishwasher is missing from the unit. The range 6 and refrigerators were also missing on the second floor. 7 Same applies for the third floor.</p> <p>8 And then on the fourth floor we noticed that the A/C 9 units were stocked, but not installed. So they were on site 10 in the unit. The washer and dryers, we did not observe 11 those on site anywhere. The dishwashers, we observed they 12 were in the units but they were still in the box and not 13 installed. And then range and refrigerators, most of them 14 were stocked in the units, but not installed.</p> <p>15 Q You say most. So not all appliances for every unit 16 were on site?</p> <p>17 A From what we observed, we did not locate any washer and 18 dryers throughout the building. Most of the other units the 19 ranges, refrigerators, dishwashers appeared -- on the fourth 20 floor specifically appeared to be on site, not installed.</p> <p>21 Q Who does installations. Is it an electrician or a 22 general contractor, or who?</p> <p>23 A It would be multiple trades for these. So you would 24 have the appliance vendor would typically come in, put them 25 in place and prepare them for connections. And then the</p>
Page 63	Page 65
<p>1 delivered like that?</p> <p>2 A Certainly possible.</p> <p>3 Q So it could be possible that there might be 4 replacements needed to be ordered if all on site?</p> <p>5 A Correct.</p> <p>6 Q And you said no installation at all on these.</p> <p>7 A Correct.</p> <p>8 Q What subs or trades to get these into the proper 9 position and installed?</p> <p>10 A A plumber would be required.</p> <p>11 Q So it says toilets and accessories. Any particular 12 accessories that you noted or anything else needed to be 13 done if they categorize this as toilets and accessories?</p> <p>14 A In my experience, it would be toilet paper holder, it 15 would be towel or a robe hook. Just general accessories 16 that would be within the bathroom. Those would be installed 17 by the plumber or would be installed by a general work and 18 labor subcontractor. It just depends on how it's packaged 19 in the project.</p> <p>20 Q Any of those noted on site?</p> <p>21 A I did not notice or observe any of those on site.</p> <p>22 Q Next page, Appliances and A/C Units. Can you describe 23 what you observed with respect to those?</p> <p>24 A This typically would be the supply of the appliances 25 and the installation of the appliances in hooking them up.</p>	<p>1 washer, dryers and the -- so the washer and the dishwasher 2 would require a plumber and an electrician. And the range 3 would require electrician. So there's multiple 4 subcontractors that would be required to get the appliances 5 functional.</p> <p>6 Q HVAC required at all for A/C units or can those be done 7 by whom?</p> <p>8 A Typically those would be installed and plugged in by 9 the appliance supplier. And generally speaking the dryer, 10 it's a fairly minor hookup. Usually the appliance 11 subcontractor would hook that up and push it into place.</p> <p>12 Q Fair enough. Next page, Page 24. Kitchen Sinks, 13 Faucets. What did you observe with that?</p> <p>14 A We observed that there were no sinks installed or 15 faucets or any trim-out done related to the kitchens and the 16 bathrooms on second, third, or fourth floor.</p> <p>17 Q Were those in unit or were those missing from the site?</p> <p>18 A I believe I recall a pallet of sinks and faucets on the 19 first floor, but it had not been unboxed or verified that 20 there was any damage or issues with it.</p> <p>21 Q It's unclear whether there's enough to finish the 22 project on site?</p> <p>23 A Unclear. We did not take a count of how many were 24 there.</p> <p>25 Q What subs or trades to get this work done?</p>

<p style="text-align: right;">Page 66</p> <p>1 A This would be a plumber.</p> <p>2 Q Next page, Page 25. Bath, Faucets, Showerheads.</p> <p>3 A Same thing. It would be the trim-out of the showers.</p> <p>4 A plumber would be required to trim all of the stuff out.</p> <p>5 None of these we observed in the units installed. Again, I</p> <p>6 believe there was a pallet of material on the first floor,</p> <p>7 but I don't recall how many there were and what specifics</p> <p>8 there were within the pallet.</p> <p>9 Q So obviously you don't know the condition of the un-</p> <p>10 palletted materials?</p> <p>11 A Correct.</p> <p>12 Q Plumber or anyone else you needed for this?</p> <p>13 A A plumber would be required for this scope.</p> <p>14 Q Next page, Page 26. Bathroom mirrors. Can you</p> <p>15 summarize that?</p> <p>16 A Bathroom mirrors would -- it appeared that this was a</p> <p>17 purchased mirror that would need to be installed by a</p> <p>18 general work and labor subcontractor. Appeared that most of</p> <p>19 them were installed. However, there were a couple of units</p> <p>20 where it wasn't installed and a couple where we noticed</p> <p>21 there was some damage with it. So...</p> <p>22 Q And it looks like some of those, looking at Photo 2,</p> <p>23 were still boxed?</p> <p>24 A Correct.</p> <p>25 Q Do you know if any of those were damaged or undamaged?</p>	<p style="text-align: right;">Page 68</p> <p>1 A In my opinion, yes.</p> <p>2 Q Next section is Conveying Systems. What is that?</p> <p>3 A This would be the elevator.</p> <p>4 Q You have 90 percent complete?</p> <p>5 A Yeah. It appeared that the elevator was installed.</p> <p>6 The components were on first floor. I was unclear whether</p> <p>7 it was hooked up and functional. It didn't appear that it</p> <p>8 was functional. Typically they -- an elevator subcontractor</p> <p>9 would not turn over an elevator until the lobbies are fully</p> <p>10 completed, proper lighting in those areas. So there is --</p> <p>11 based on my experience, this is to a point where they won't</p> <p>12 finish and turn over the elevator until all the surrounding</p> <p>13 finishes are completely done. And it's the last item to</p> <p>14 terminate any connections, test, balance and get the</p> <p>15 elevator operational.</p> <p>16 Q That sounds like specific work, specific sub needed to</p> <p>17 do that?</p> <p>18 A The elevator supplier or subcontractor would need to be</p> <p>19 on site to do that work.</p> <p>20 Q Would that require a city inspection as well?</p> <p>21 A It would, yes.</p> <p>22 Q Who pays for that usually?</p> <p>23 A Usually it's the project would pay for that.</p> <p>24 Q Next page, Page 28, Building Sprinkler. Can you</p> <p>25 explain what you observed?</p>
<p style="text-align: right;">Page 67</p> <p>1 A We do not know, no.</p> <p>2 Q Did it look like there were replacement materials on</p> <p>3 site?</p> <p>4 A Not that I noticed, no.</p> <p>5 Q Who would finish that work?</p> <p>6 A General work and labor subcontractor could finish the</p> <p>7 trim-out for this work.</p> <p>8 Q Next page, Page 27, top. Window Treatments.</p> <p>9 A Window treatments would be blinds, whether they are --</p> <p>10 the type of blind kind of varies between projects, but it's</p> <p>11 installation at the windows in the residential units.</p> <p>12 Q You have zero percent on that?</p> <p>13 A We did not observe any window treatments on site. And</p> <p>14 we didn't observe any window treatments installed, either.</p> <p>15 So we noted them as zero percent complete. This in our</p> <p>16 experience is usually a supply and install package.</p> <p>17 Q Install and supply from who? A separate trade or...</p> <p>18 A Separate trade.</p> <p>19 Q What kind of trade would that be?</p> <p>20 A There are trades that specifically do window</p> <p>21 treatments, supply and install. So that's who we have used</p> <p>22 in the past. In my experience it's a separate trade</p> <p>23 completely.</p> <p>24 Q Window treatments generally required to finish a</p> <p>25 building, especially a high-end apartment complex?</p>	<p style="text-align: right;">Page 69</p> <p>1 A Building sprinkler would be the fire sprinkler system</p> <p>2 within the building. There is coverage -- typically it's</p> <p>3 concealed within the truss spaces between the floors so you</p> <p>4 can't really see it at this stage of the project, which is</p> <p>5 why we noted the majority of the scope was completed. The</p> <p>6 majority of that scope happens during the framing before</p> <p>7 drywall happens. And the only items that we observed needed</p> <p>8 to be complete were trimming out sprinkler heads. We noted</p> <p>9 on first floor that the final inspection tags had not been</p> <p>10 completed. It appeared that the riser pipe and valves were</p> <p>11 wired and installed, but without the final inspection tags,</p> <p>12 they wouldn't be able to turn the system on and have it be</p> <p>13 operational. So that would require fire inspection with the</p> <p>14 city. That would require the fire sprinkler subcontractor</p> <p>15 to be on site to assist in that process and finalize any</p> <p>16 items that were required.</p> <p>17 Q You said the fire sprinkler subcontractor. So this</p> <p>18 isn't general plumbing work?</p> <p>19 A Correct. Not general plumbing work.</p> <p>20 Q Next page, Plumbing. Can you describe what you</p> <p>21 observed for that?</p> <p>22 A Yeah. Plumbing would be just what -- you know, all of</p> <p>23 the rough-in within the walls for PVC for drains, for water</p> <p>24 piping. But it also includes trimming out all of the</p> <p>25 showers and the accessories and the sinks and the toilets.</p>

<p style="text-align: right;">Page 70</p> <p>1 Our assumption is that all of the work within the walls is</p> <p>2 completed because it's behind sheetrock and was not</p> <p>3 observable.</p> <p>4 Q You didn't rip anything open to take a peek?</p> <p>5 A We did not. However, there were areas where there were</p> <p>6 not showers mounted, as you can see in those first two</p> <p>7 photos. So there was still significant work that needed to</p> <p>8 be done to set those showers and to get them plumbed and</p> <p>9 hooked up. Obviously those would require a drain connection</p> <p>10 and water connections in and to the shower itself. So</p> <p>11 there's work that would be required for that subcontractor</p> <p>12 to complete the job.</p> <p>13 Q You've used the phrase trim out on a few different</p> <p>14 occasions. What do you mean by that term of art?</p> <p>15 A Trim out in the context of plumbing would be -- the</p> <p>16 rough-in would be the piping within the walls. And</p> <p>17 generally they'll stub a pipe out of the wall that they'll</p> <p>18 hook into later with the finish materials. So a showerhead</p> <p>19 will have a pipe, a copper pipe coming out of the wall and</p> <p>20 then they'll tie onto that with the finished showerhead to</p> <p>21 trim out the unit. So when I say trim-out, it's putting the</p> <p>22 items that you are seeing as a finished product beyond the</p> <p>23 rough-in stage if that makes sense.</p> <p>24 Q Kind of put the finishing touches on whatever the sub</p> <p>25 is.</p>	<p style="text-align: right;">Page 72</p> <p>1 A Our assumption was that this was the electrical</p> <p>2 package. So any work associated with wiring, panels. And</p> <p>3 you could see on the couple of photos there it appeared that</p> <p>4 the electrician had installed the devices prior to</p> <p>5 sheetrock, which is very atypical. In our experience it's</p> <p>6 finished, painted before any of the devices are trimmed out</p> <p>7 in the units. So in order to get that to a completed state,</p> <p>8 I would assume that that would need to be taken off, let the</p> <p>9 drywall subcontractor come in, repair the walls, finish</p> <p>10 everything, and then have the electrical subcontractor come</p> <p>11 back in and trim all the devices out after paint is</p> <p>12 complete.</p> <p>13 We did observe that most of the panels within the units</p> <p>14 had been labeled and what appeared to be trimmed out. We</p> <p>15 did not test the system to determine if it was fully</p> <p>16 functional. So that was -- it appeared that there was still</p> <p>17 some work and final inspections that needed to be done to</p> <p>18 close that package out.</p> <p>19 Q This would need to be performed by an electrician?</p> <p>20 A Correct.</p> <p>21 Q And that was all electrical work. Did you notice any</p> <p>22 type of security system on site?</p> <p>23 A I did not, no.</p> <p>24 Q If there was going to be a security system, would that</p> <p>25 be an electrician or a separate sub?</p>
<p style="text-align: right;">Page 71</p> <p>1 A Finishing touches, exactly. Yeah.</p> <p>2 Q Thank you. Next page, Page 30, HVAC. What</p> <p>3 specifically was needed for HVAC in this building?</p> <p>4 A HVAC is heating, ventilation, air conditioning. So</p> <p>5 this is the -- this would be the exhaust fans in the</p> <p>6 bathrooms. We noted that none of those had been trimmed out</p> <p>7 on the upper floors, which is why we've noted it as 90</p> <p>8 percent complete. The assumption was that there was</p> <p>9 additional work that needed to be happening on the first</p> <p>10 floor to support the common spaces. At that time we were</p> <p>11 unsure of what the full scope of that project was. So our</p> <p>12 assumption would be that there is an HVAC contractor that</p> <p>13 would need to be on site to finish that particular scope of</p> <p>14 work. Trim-out the grills and the diffusers within the</p> <p>15 bathrooms. As you can see by those first --</p> <p>16 Q What are grills and diffusers? Sorry.</p> <p>17 A It's basically a trim piece that conceals the fan and</p> <p>18 the motor that makes it look finished and complete.</p> <p>19 Q Who would do that work?</p> <p>20 A An HVAC subcontractor would do that work.</p> <p>21 Q Couldn't be done by a general?</p> <p>22 A I have not seen a general subcontractor do that work on</p> <p>23 any of the projects that I've been on.</p> <p>24 Q Next page, Page 31, Electrical Security System. What's</p> <p>25 in there?</p>	<p style="text-align: right;">Page 73</p> <p>1 A It could be an electrician. It also could be a separate</p> <p>2 subcontractor. It depends on the scope there. But it could</p> <p>3 be another trade.</p> <p>4 Q And again, electrical/security system was the category</p> <p>5 used by The Ruins LLC?</p> <p>6 A Correct.</p> <p>7 Q Next page, Page 32, Paving and Sidewalk. 75 percent</p> <p>8 complete. What was that?</p> <p>9 A Site concrete around the building. At the time of our</p> <p>10 inspection, we observed that there was some concrete work</p> <p>11 between the street and the building that had not been</p> <p>12 completed yet. We also observed that there was elevation</p> <p>13 discrepancies between the garage and the exterior alley</p> <p>14 which would require some removal of concrete and</p> <p>15 reinstallation of concrete to make sure that there isn't a</p> <p>16 step as you drive into the building.</p> <p>17 Q To remove that concrete and pour new concrete. Is that</p> <p>18 a concrete crew? Is that a general in concrete? Or who</p> <p>19 gets that done?</p> <p>20 A Typically that would be done by a concrete</p> <p>21 subcontractor. They could perform the removal and the setup</p> <p>22 and the replacement of that particular item.</p> <p>23 Q Did you identify any materials on site that would be</p> <p>24 able to finish that remediation?</p> <p>25 A We did not.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q All right. Next page, Page 33, is Bid Packages not  2 applicable for the site inspection. Can you explain for the  3 Court what that is?  4 A These would be items that just weren't observable.  5 Could be items that were completed prior to the stage of the  6 process such as building demolition, site survey, civil,  7 asbestos. My assumption is that those items were pertaining  8 to the existing site prior to construction of the new  9 building, testing and inspections, foundation removal.  10 Again, those are items that just are not observable. So  11 categorized all of these that were not applicable because we  12 couldn't observe actual work, whether they were done or not.  13 Q So these were their categories, but you couldn't  14 provide an opinion for them?  15 A Correct.  16 Q If we go to the next page, Page 34, Additional  17 Considerations. Can you summarize this for the Court at  18 all?  19 A Additional considerations is just items that we noticed  20 as we were walking through doing our inspections that we  21 felt would need to be addressed in one way or another. On  22 the exterior side we noted that there were a couple leaks  23 within the building that we identified as we were walking  24 through. We took some photos of those. We did not do an  25 investigation to determine where those leaks were coming</p>	<p style="text-align: right;">Page 76</p> <p>1 A If I were doing that, I would cut open the ceiling and  2 understand where the water is coming in. Typically when  3 we're doing leak investigation, we'll try to recreate the  4 leak first. So we'll go up and we'll -- if it's a roof  5 leak, we'll try to put water on the roof to recreate the  6 water coming in to signify where the leak is. So then we  7 open up the ceiling, determine where the water is coming in,  8 and trace it back to its source. So at its most intensive,  9 it becomes a bit of a process to try to correct those items.  10 Q Obviously I say, but assuming a leaking roof is  11 something that needs to be fixed before you can get a  12 certificate of occupancy or various...  13 A Correct.  14 Q Okay. And you were not asked to investigate the source  15 of the leak for this Ruins building, were you?  16 A No, we were not.  17 Q Do you know if anyone has investigated the source of a  18 leak?  19 A I'm not aware of that.  20 Q If we can skip to Page 36. Can you provide a brief  21 depiction of what these punch items are?  22 A if you can scroll a little bit further there.  23 Q One more page here. I'm sorry.  24 A Yeah. So this -- just to kind of give some context for  25 this, the software that we used to compile and organize</p>
<p style="text-align: right;">Page 75</p> <p>1 from, but there would have to be some potential work  2 associated with that. There could also be remediation with  3 those obviously. So that would entail roofing  4 subcontractor, general work and labor contractor potentially  5 to open the cavity up to determine where the leak is coming  6 from and then repair it back. Potentially electrician.  7 There was one area we noted that there was an actual light  8 that was filled with water in the hallway. And so that  9 would require an electrician to come and potentially do some  10 remediation on that.  11 Q What would indicate a possible cause for that, the  12 water in the light?  13 A Our assumption would be that it was a roof leak and  14 that somehow water got down into the roof cavity or the  15 truss cavity, found a wire, went along the wire and into the  16 light. It's unlikely that it was directly above the light,  17 but it somehow navigated to -- whether it ran on the top of  18 the sheetrock and then made it to the light, which is the  19 lowest or the point of release for the water, if you will.  20 So a number of different things, but it would require a  21 little bit more investigation to determine where exactly the  22 leaks may be coming from in that particular instance.  23 Q When you say investigation, what type of -- what do you  24 mean by investigation? How would you find where it's coming  25 from?</p>	<p style="text-align: right;">Page 77</p> <p>1 everything with our photos and our inspection was a software  2 called Procore. And so this is a report that Procore  3 generates after we put all of the information into it.  4 Associated with this is a specific item that we identify.  5 So where it says number 581, complete door hardware, I would  6 consider that a punch list item or a task that needed to be  7 completed. We identify a location with that. So a second  8 floor fitness center in this particular case. The date that  9 it was created. The due date is an arbitrary date that's  10 just applied if it was in the context of a normal project  11 would set a particular day that it needs to be completed in.  12 Status initiated, again, that's just -- it's either  13 initiated, addressed, completed. There's a couple different  14 phases that would be appropriate for that.  15 Generally speaking, we use this to try to organize all  16 of the potential items that needed to be completed. We can  17 assign photos to each particular item so that it's  18 organized. When we look at a photo, we know what it's  19 associated with.  20 So for this particular one, we took four photos of this  21 particular door that had not been installed. So doorframe,  22 door hardware, all noted that needed to be completed. So  23 generally speaking that's how every one of these items is  24 laid out.  25 MR. HUSHKA: Obviously the Court has been very</p>

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<p>1 deferential for us in allowing us to go through these. I'm</p> <p>2 not going to go through the next 360 pages of this punch</p> <p>3 list.</p> <p>4 THE COURT: Thank you. Thank you.</p> <p>5 BY MR. HUSHKA:</p> <p>6 Q But am I safe to assume that this depicts everything</p> <p>7 that needs to be completed in more detail beyond just kind</p> <p>8 of the overview you gave for each category?</p> <p>9 A Yes, correct.</p> <p>10 Q Okay. And the Court can obviously look at that and see</p> <p>11 if it wants to look at any particular thing that needs to be</p> <p>12 done in this appendix?</p> <p>13 A Yes.</p> <p>14 Q Mr. Gehrtz, the multiple opinions that we just</p> <p>15 discussed with respect to this report, did you reach those</p> <p>16 opinions utilizing your training and experience?</p> <p>17 A I did.</p> <p>18 Q And did you reach those opinions to a reasonable degree</p> <p>19 of certainty?</p> <p>20 A Yes.</p> <p>21 MR. HUSHKA: Your Honor, at this time we would</p> <p>22 offer ECF 60-1(A).</p> <p>23 THE COURT: Any objection?</p> <p>24 MR. VERSTANDIG: I believe there's going to be an</p> <p>25 objection, but I'd like to talk to my client for a moment</p>	<p>1 authorities. One is a Sixth Circuit case called Engebretsen</p> <p>2 v. Fairchild Aircraft Corp. found at 21 F.3d 721 that</p> <p>3 provides, "Rule 702 permits the admission of expert opinion</p> <p>4 testimony, not opinions contained in documents prepared out</p> <p>5 of court."</p> <p>6 The second is going to be a Northern District of</p> <p>7 Iowa case from 2017. It's unreported but found at 2017 WL</p> <p>8 752282. The name of the case is Bruhn Farms Joint Venture</p> <p>9 v. Fireman's Fund Insurance Company. And that provides with</p> <p>10 a string citation, "Although neither party has raised the</p> <p>11 issue, the court begins its analysis with the finding that</p> <p>12 an expert's report is hearsay and is not admissible in</p> <p>13 evidence unless a party can establish an exception to the</p> <p>14 hearsay rule." It then proceeds to cite several cases</p> <p>15 including the Sixth Circuit case I cited a moment ago and</p> <p>16 further provides, "Accordingly, the court will not admit the</p> <p>17 written report of any expert unless a party can lay a proper</p> <p>18 foundation for an exception to the hearsay rule."</p> <p>19 In visiting Rule 801(d) itself, it is clear that a</p> <p>20 declarant witness's prior statement is admissible if it is</p> <p>21 inconsistent with the declarant's testimony and was given</p> <p>22 under penalty of perjury at a trial here in another</p> <p>23 proceeding or in a deposition or if it is consistent with</p> <p>24 the declarant's testimony but is offered to rebut an express</p> <p>25 or implied charge that the declarant recently fabricated it</p>
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<p>1 before I make the objection.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. VERSTANDIG: And I realize that creates</p> <p>4 awkward timing. I'm happy to preview what the objection is.</p> <p>5 But there's a strategic question, and this is the first</p> <p>6 moment where I feel unfortunate not being in the courtroom.</p> <p>7 THE COURT: Any objection to a short recess before</p> <p>8 we complete the examination?</p> <p>9 MR. HUSHKA: No, Your Honor.</p> <p>10 THE COURT: Thank you. Okay. Why don't we just</p> <p>11 take a 15-minute morning break and then resume at 10:15.</p> <p>12 MR. VERSTANDIG: Thank you, Your Honor.</p> <p>13 (Recess)</p> <p>14 THE COURT: Please be seated. We are back on the</p> <p>15 record with bankruptcy Case Number 25-30004, In re The</p> <p>16 Ruins. And when we took a break, Red River State Bank had</p> <p>17 just offered an expert report for receipt into evidence and</p> <p>18 I was waiting to hear whether there might be an objection to</p> <p>19 the Court receiving the report as evidence.</p> <p>20 MR. VERSTANDIG: Your Honor, thank you for the</p> <p>21 break. And obviously not normally accustomed to talking to</p> <p>22 a client before interjecting an objection, but recognizing</p> <p>23 where this may take us for the day.</p> <p>24 The Debtor is going to object on hearsay grounds</p> <p>25 under Rule 801(d). And the Debtor is going to point to two</p>	<p>1 or acted from a recent improper influence or motive in so</p> <p>2 testifying.</p> <p>3 We don't believe any of those conditions are</p> <p>4 satisfied here. Obviously his testimony carries the weight</p> <p>5 that it does. And we're not seeking to strike the witness's</p> <p>6 testimony, but we don't believe the report itself is</p> <p>7 properly admissible.</p> <p>8 THE COURT: Would you like to respond?</p> <p>9 MR. HUSHKA: So I guess if I'm following the</p> <p>10 objection correctly, they are not objecting that the report</p> <p>11 is based on inadmissible hearsay, but that the report itself</p> <p>12 is an out-of-court statement made for the truth of the</p> <p>13 matter asserted?</p> <p>14 THE COURT: Yes. And it's not like I haven't</p> <p>15 heard this the first time. I'll let you respond and then</p> <p>16 I'll tell you what I think.</p> <p>17 MR. HUSHKA: Your Honor, I guess we would ask the</p> <p>18 Court accept the report. It outlines the opinions of the</p> <p>19 expert as he's testified to. We didn't go through line by</p> <p>20 line, item by item so that we could put the report in. I</p> <p>21 guess if the Court would object to taking the report itself</p> <p>22 to the extent that we want to get those opinions in, it</p> <p>23 would require us to again go through those four-hundred-and-</p> <p>24 some-odd pages of the report, which I guess we can do if the</p> <p>25 Court would be inclined not to receive it. But I certainly</p>



<p style="text-align: right;">Page 82</p> <p>1 hope that we don't have to do that.</p> <p>2 THE COURT: That's the way I see it. that's</p> <p>3 exactly -- you must be a mind reader. Yes. It's absolutely</p> <p>4 a legitimate objection, but the response that I would tell</p> <p>5 you is that if you don't want me to read that report after</p> <p>6 today, then I'm going to let the expert testify as to every</p> <p>7 detail.</p> <p>8 MR. VERSTANDIG: And, Your Honor, for clarity</p> <p>9 without waiving privilege, I think that was anticipated.</p> <p>10 And that was the reason for wanting some colloquy with the</p> <p>11 client, was understanding that this might be a very lengthy</p> <p>12 trip to the expert stand.</p> <p>13 THE COURT: Yes. So am I hearing that you still</p> <p>14 want to maintain your objection and we'll sit and listen to</p> <p>15 what all of the expert opinions are, or that you now</p> <p>16 recognize that you have a legitimate objection but are</p> <p>17 willing to waive it so that you don't have to listen to</p> <p>18 every line of the expert report?</p> <p>19 MR. VERSTANDIG: I -- Your Honor, based on my</p> <p>20 colloquy with my client, unless Ms. Cathcart is going to bob</p> <p>21 her head in a different direction, I think we would note</p> <p>22 that we're open to the expert testifying in broad summary</p> <p>23 form and we're open to the expert offering the conclusions</p> <p>24 from his report without going over them on a line-by-line</p> <p>25 basis. We are not trying to turn this into a ten-day trip</p>	<p style="text-align: right;">Page 84</p> <p>1 Sorry to interrupt.</p> <p>2 THE COURT: Pages 1 through 401 of 60-1 is</p> <p>3 received. Okay. Thank you.</p> <p>4 (Exhibit 60-1(A) admitted into evidence)</p> <p>5 THE COURT: All right.</p> <p>6 RESUMED DIRECT EXAMINATION OF MATTHEW GEHRTZ</p> <p>7 BY MR. HUSHKA:</p> <p>8 Q All right. Mr. Gehrtz, before we get to your second</p> <p>9 report, I want to talk briefly about The Ruins development</p> <p>10 and the construction project. I believe you earlier</p> <p>11 testified that you have experience in these type of multi-</p> <p>12 use developments. Is that correct?</p> <p>13 A That's correct.</p> <p>14 Q If you had been in charge of a development of this type</p> <p>15 of scope, can you explain for the Court what your process</p> <p>16 would have been from a pre-design or pre-construction phase</p> <p>17 leading up to ground break? And then we'll kind of draw the</p> <p>18 line there and we'll talk about what comes later after.</p> <p>19 Q From a pre-construction standpoint, I would go through</p> <p>20 the process of developing individual scopes of work for each</p> <p>21 of the subcontractors that would be required to be on the</p> <p>22 job to complete the project. And that may be anywhere from</p> <p>23 20 to 35 different subcontractors that would have individual</p> <p>24 scopes of work to be completed. In that development phase,</p> <p>25 we would put together a list of items that we would expect</p>
<p style="text-align: right;">Page 83</p> <p>1 to the witness stand by any means. But there are some</p> <p>2 concerns about allowing the report in without them being</p> <p>3 testified to.</p> <p>4 Is there any chance Ms. Cathcart is bobbing her</p> <p>5 head?</p> <p>6 THE COURT: She's shaking her head no. So I don't</p> <p>7 know what that means in your exchange.</p> <p>8 MR. VERSTANDIG: Your Honor, Court's indulgence</p> <p>9 for one second.</p> <p>10 THE COURT: Okay.</p> <p>11 MR. VERSTANDIG: I will be there Tuesday. I</p> <p>12 promise.</p> <p>13 THE COURT: You know what? nobody really</p> <p>14 anticipated how long this hearing would take. So we're just</p> <p>15 going to be flexible.</p> <p>16 MR. VERSTANDIG: Your Honor, we'll consent to</p> <p>17 letting it in.</p> <p>18 THE COURT: Okay. All right. The Court receives</p> <p>19 the expert report at Docket 60-1. Is that right?</p> <p>20 MR. HUSHKA: 60-1(A).</p> <p>21 THE COURT: 60-1(A). Okay.</p> <p>22 MR. HUSHKA: Pages 1 through 401. Sorry for</p> <p>23 interrupting.</p> <p>24 THE COURT: I'm sorry?</p> <p>25 MR. HUSHKA: It's pages 1 through 401 of 60-1.</p>	<p style="text-align: right;">Page 85</p> <p>1 that particular subcontractor to complete for their full</p> <p>2 scope. We call it a scope of work document. And so we put</p> <p>3 that together when we send that out for bidding. We would</p> <p>4 get all of the pricing put together for each of the</p> <p>5 subcontractors. Typically we would receive two to three</p> <p>6 different bidders in every subcontractor package and would</p> <p>7 tabulate all the bidders, make sure that all of the scopes</p> <p>8 of work are comparable so that there isn't any missing scope</p> <p>9 or missing item, to make sure that the bids are comparable</p> <p>10 apples to apples. So if one bidder is lower and the other</p> <p>11 is higher, we want to make sure that they have the same</p> <p>12 scope of work to ensure that the price is comparable before</p> <p>13 we recommend awarding to a certain subcontractor.</p> <p>14 Once we put that all together, we'll associate or put</p> <p>15 together a schedule that coordinates all of the different</p> <p>16 trades in sequential order. And the reason that's important</p> <p>17 is because if they're not acting in unison with the overall</p> <p>18 project, they may -- they only care about their own work</p> <p>19 unless they're told otherwise. And so we make sure that we</p> <p>20 put together a scope or a schedule that says this</p> <p>21 subcontractor is expected to be on site from this time to</p> <p>22 this time. And once that's complete, then this next</p> <p>23 subcontractor comes in. We don't want --</p> <p>24 Q I'm going to interrupt you there for a second, Mr.</p> <p>25 Gehrtz. My apologies. You said you put together a schedule</p>



<p style="text-align: right;">Page 86</p> <p>1 as part of your process. And I believe you were explaining</p> <p>2 that schedule. Is that the responsibility of the</p> <p>3 construction manager? Or who is responsible for putting</p> <p>4 that together and deciding which subs or which trades are</p> <p>5 going to be on site at any given time?</p> <p>6 A I would say it's the responsibility of whoever is</p> <p>7 managing the project, whether that's a construction manager</p> <p>8 or project manager, whatever the term is used. It's whoever</p> <p>9 is managing the work of the project.</p> <p>10 Q And you described the schedule as sequential. Does</p> <p>11 that mean that you have certain subs or trades in before</p> <p>12 others? Or what did you mean by that?</p> <p>13 A Yeah. There's a certain sequence that's required to be</p> <p>14 efficient for contractors to do their work. And so --</p> <p>15 Q What is that sequence?</p> <p>16 A So sequencing, in broad terms it's -- it's foundation,</p> <p>17 it's framing, it's rough-in. So there's orders that things</p> <p>18 need to be done in order for it to be efficient, in order</p> <p>19 for quality to be where it needs to be.</p> <p>20 For example, from a flooring standpoint, you typically</p> <p>21 don't see the flooring installed after some of the base and</p> <p>22 the trim and stuff is installed. So we need to have the</p> <p>23 floor installer in there first to do all of the flooring and</p> <p>24 then a finish carpenter to come in, trim out the doors,</p> <p>25 frames, base, things like that. So you achieve the level of</p>	<p style="text-align: right;">Page 88</p> <p>1 Q What items?</p> <p>2 A Generally I would say the water tightness of the</p> <p>3 building is a priority prior to finishing any of the inside</p> <p>4 of the building. So when I look at the siding not being</p> <p>5 completed and I see visible signs of moisture penetration at</p> <p>6 windows and whatnot, that to me says that the exterior isn't</p> <p>7 watertight, therefore some of the finishes if they're going</p> <p>8 on inside the building could be damaged and have to be</p> <p>9 repaired. So that's to me out of sequence. It's not</p> <p>10 uncommon to have those happening simultaneously. But for</p> <p>11 one to be completely not finished while others continue to</p> <p>12 move forward on the inside is for my opinion is out of</p> <p>13 sequence.</p> <p>14 Q So just to put a button on this, do you believe that</p> <p>15 The Ruins development was properly sequenced?</p> <p>16 A I do not.</p> <p>17 Q All right, Mr. Gehrtz, I would like to turn your</p> <p>18 attention to the second report that you prepared.</p> <p>19 Sharon, if you can pull up ECF 60-1, Page 402.</p> <p>20 It's Exhibit B.</p> <p>21 BY MR. VERSTANDIG:</p> <p>22 Q Please let me know when you see that on the screen,</p> <p>23 sir.</p> <p>24 A I can see it.</p> <p>25 Q All right. Do you recognize this document?</p>
<p style="text-align: right;">Page 87</p> <p>1 quality that's expected by doing the sequential order of</p> <p>2 operations.</p> <p>3 Q Are there dangers that manifest if that proper</p> <p>4 sequential order isn't followed? Not I guess from like a</p> <p>5 physical danger to people, but to the building or the</p> <p>6 construction process?</p> <p>7 A I think generally speaking if a subcontractor comes in</p> <p>8 out of sequence, there is potential for materials to be</p> <p>9 damaged. There's potential for work that has to be redone</p> <p>10 because it's -- one of the examples that I would point to is</p> <p>11 appliances being delivered to the site before they're ready.</p> <p>12 If there's other activities of construction that are</p> <p>13 happening that are going to risk damaging the appliances</p> <p>14 that are delivered to the site out of sequence, there could</p> <p>15 be cost to replace or to repair particular items. That's</p> <p>16 just one example that I can point to to illustrate.</p> <p>17 Q If things aren't properly sequenced, is there an</p> <p>18 increased danger of water penetration or other damages such</p> <p>19 as that?</p> <p>20 A I could see that being the case, yes.</p> <p>21 Q Talking specifically to this project, based on your</p> <p>22 observations and your inspection and your knowledge of this</p> <p>23 project, was this building properly sequenced?</p> <p>24 A It seemed that there were a few items that were out of</p> <p>25 sequence in my opinion.</p>	<p style="text-align: right;">Page 89</p> <p>1 A I do.</p> <p>2 Q What is this document?</p> <p>3 A This is our follow-up inspection to our original</p> <p>4 inspection. And I believe that this -- it's dated September</p> <p>5 27th. I believe we were on site September 24th to do a</p> <p>6 reinspection to understand if there had been any additional</p> <p>7 work that had been completed since our first inspection.</p> <p>8 Q Okay. If we scroll to the bottom of this page, is</p> <p>9 there a signature on this document?</p> <p>10 A Yes.</p> <p>11 Q Is that your signature?</p> <p>12 A It is, yes.</p> <p>13 Q All right. Does this report contain our opinion as to</p> <p>14 the progress that had been done on The Ruins?</p> <p>15 A Yes.</p> <p>16 Q And what was that opinion?</p> <p>17 A Based on the observations I made on the site, I felt</p> <p>18 like there was no significant advancement of any of the</p> <p>19 work, specifically any items pertaining to the water</p> <p>20 penetration and the damage that we had noted on the first</p> <p>21 report.</p> <p>22 Q You mentioned water penetration. Does this report also</p> <p>23 identify your opinion as to water penetration and damage to</p> <p>24 The Ruins?</p> <p>25 A Yes, it does.</p>

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<p>1 Q And what was that opinion?</p> <p>2 A My opinion was that there was more water damage or more</p> <p>3 signs of moisture penetrating into the building from the</p> <p>4 first inspection to the second inspection.</p> <p>5 Q Was that opinion informed by observations that you made</p> <p>6 during your second inspection?</p> <p>7 A Yes.</p> <p>8 Q What observations?</p> <p>9 A Visual observations.</p> <p>10 Q Does this report contain photos of those visible</p> <p>11 observations?</p> <p>12 A Yes, it does.</p> <p>13 Q Are those photos true and accurate representations of</p> <p>14 what you observed?</p> <p>15 A Yes.</p> <p>16 Q All right. If we were to scroll down to Page 2 of the</p> <p>17 report, are these photos of what you observed during your</p> <p>18 second --</p> <p>19 A Yes.</p> <p>20 Q Can you kind of go through these for the Court and</p> <p>21 explain what we're looking at and what you're observing and</p> <p>22 what your conclusions are?</p> <p>23 A Sure. The photo on the left was from the original site</p> <p>24 inspection. It showed cardboard taped over the window. And</p> <p>25 the middle photo was that same window but it had appeared</p>	<p>1 location as it was during our first inspection in addition</p> <p>2 to the material and the door and the frame and everything</p> <p>3 that was -- all appeared to be roughly in the same spot.</p> <p>4 Q If we were to scroll down to the next three photos, the</p> <p>5 next line, can you describe what these photos depict?</p> <p>6 A The photo on the left is from the original April 17th</p> <p>7 inspection, which if you -- it's a little bit hard to see.</p> <p>8 But on the right side of the window at the head, you can see</p> <p>9 that there's a little bit of drywall tape that has sagging</p> <p>10 down from the head of the window. And the middle photo,</p> <p>11 that was taken on September 24th. And it shows further</p> <p>12 deterioration of the head of that window where there's now a</p> <p>13 spot just to the left of that center of the window that</p> <p>14 shows some material that's hanging down there. And then the</p> <p>15 photo on the right is just a close-up of the head of that</p> <p>16 window to further emphasize that further deterioration from</p> <p>17 inspection one and two over time.</p> <p>18 Q Just to make clear, you didn't peel back any of that</p> <p>19 material, did you, for your inspection?</p> <p>20 A We did not, no.</p> <p>21 Q Do you have an idea of what caused that material to</p> <p>22 bubble and peel like that?</p> <p>23 A My assumption is that it's water damage or water</p> <p>24 penetration of some sort. It's consistent with what I've</p> <p>25 seen in the past for water penetration.</p>
Page 91	Page 93
<p>1 that the cardboard was removed and replaced with some sort</p> <p>2 of a clear tape or clear plastic of some sort. The window</p> <p>3 had not been replaced, but it had just -- the cardboard had</p> <p>4 been removed and replaced with some other type of temporary</p> <p>5 solution.</p> <p>6 And the photo to the right is just a closer-up photo of</p> <p>7 that. You can see the tape there in the middle of the photo</p> <p>8 over the top of the window.</p> <p>9 Q What's that discoloration on the top above the frame?</p> <p>10 A My assumption is that that discoloration was from</p> <p>11 moisture penetration at the particular head of that window.</p> <p>12 Q Why do you believe that?</p> <p>13 A It's consistent with what I've seen in the past with</p> <p>14 other areas where water is leaking above the window.</p> <p>15 Q Are you familiar with water penetration from other jobs</p> <p>16 and inspections you've performed?</p> <p>17 A Yes.</p> <p>18 Q If we go down to the next line and the next pair of</p> <p>19 photos, what are -- can you describe those for the Court</p> <p>20 what we're looking at?</p> <p>21 A The photo on the left in comparison to the photo on the</p> <p>22 right is taken from approximately the same location. And it</p> <p>23 illustrates in my opinion that there had been no significant</p> <p>24 work to the point where there appears to be a pile of debris</p> <p>25 that's swept into a pile and is in the same approximate</p>	<p>1 Q If we go to the next page, there's another three-photo</p> <p>2 lineup. Can you describe these photos for the Court?</p> <p>3 A Yeah. The photo on the left again is from the first</p> <p>4 inspection. And it shows that at the head of the window</p> <p>5 there was a little bit of deterioration with the drywall</p> <p>6 material there and the tape. The second photo, which is in</p> <p>7 the middle, it shows that that's further deteriorated and</p> <p>8 it's now hanging down from the head of the window. And</p> <p>9 another item I would note just in the foreground of the</p> <p>10 photo, there is equipment. I believe these are appliances</p> <p>11 that are in boxes. It still appeared to be in generally the</p> <p>12 exact location as they were when we did our first report.</p> <p>13 The photo on the right is just again a closeup photo of that</p> <p>14 same scenario where it shows that there's further</p> <p>15 deterioration at the head of that window.</p> <p>16 Q And again just to clarify, you didn't peel back any of</p> <p>17 the tape or anything on this window?</p> <p>18 A Correct.</p> <p>19 Q What do you believe is the cause of that bubbling and</p> <p>20 peeling?</p> <p>21 A Moisture penetration.</p> <p>22 Q The next set of three photos. We were on that page.</p> <p>23 What are these three?</p> <p>24 A Again, this is another scenario that just shows from</p> <p>25 the first inspection of the second inspection that further</p>

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<p>1 deterioration. This photo orientation isn't in exactly the</p> <p>2 same location, but it does show the further deterioration of</p> <p>3 the head of the window essentially.</p> <p>4 Q The cause of this deterioration in your opinion?</p> <p>5 A Moisture penetration.</p> <p>6 Q Okay. We've looked at window photos. Just to clarify</p> <p>7 for the Court, is this the same window from different angles</p> <p>8 or are these various sets of two or three slides, are these</p> <p>9 different, separate windows?</p> <p>10 A This particular window is a different orientations. In</p> <p>11 the first photo it's to the left essentially. And the</p> <p>12 second two photos are to the right.</p> <p>13 Q I guess what I'm asking -- I phrased that unartfully.</p> <p>14 There's one, two, three, four, five different lines of</p> <p>15 photos. Are those five lines depicting an individual five</p> <p>16 different areas, or are those multiple angles of fewer than</p> <p>17 five areas?</p> <p>18 A They're different areas.</p> <p>19 Q Mr. Gehrtz, the multiple opinions that we just</p> <p>20 discussed with respect to this report, did you reach those</p> <p>21 opinions utilizing your training and experience?</p> <p>22 A Yes.</p> <p>23 Q And did you reach those opinions to a reasonable degree</p> <p>24 of certainty?</p> <p>25 A Yes.</p>	<p>1 under-construction 63-unit mid-high-rise property at 315</p> <p>2 East Kemp Avenue in Watertown, South Dakota."</p> <p>3 MR. VERSTANDIG: Objection, hearsay.</p> <p>4 THE COURT: Hold on.</p> <p>5 MR. VERSTANDIG: Objection, hearsay.</p> <p>6 THE COURT: It is hearsay.</p> <p>7 MR. HUSHKA: I'm going to summarize, Your Honor,</p> <p>8 and then I'm going to ask if that is still his opinion. And</p> <p>9 so I guess I can go line through line and ask if that's your</p> <p>10 opinion or go through this. But I believe that he can</p> <p>11 testify what his opinion is currently and whether it's</p> <p>12 consistent with this.</p> <p>13 THE COURT: He can, but reading straight from the</p> <p>14 report, is that necessary? Or can you just ask questions?</p> <p>15 MR. HUSHKA: I guess I thought it would be more</p> <p>16 efficient to just do that and summarize. But I guess I can</p> <p>17 ask questions if we want to do it that way.</p> <p>18 THE COURT: You can -- you know what? You're in</p> <p>19 charge. It's your examination. I'll just tell you -- I'm</p> <p>20 calling balls and strikes. And you just --</p> <p>21 MR. HUSHKA: I guess was that sustained, Your</p> <p>22 Honor, and you want me to ask shorter questions, or was it</p> <p>23 overruled?</p> <p>24 THE COURT: So it is hearsay when you read it. If</p> <p>25 you ask questions and he answers them, no matter how close</p>
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<p>1 MR. HUSHKA: Your Honor, we would offer ECF</p> <p>2 Exhibit 60-1(B), Pages 402 through 404 of the ECF number.</p> <p>3 MR. VERSTANDIG: Your Honor, this time we're going</p> <p>4 to assert the same objection but in hybrid form. We don't</p> <p>5 object to pages 403 and 404, which are the photographs</p> <p>6 insofar as the expert opinion this time is a neat three</p> <p>7 paragraphs. We would object to the actual expert opinion.</p> <p>8 THE COURT: Response?</p> <p>9 MR. HUSHKA: I can certainly read in the opinion</p> <p>10 and ask if that is still his opinion and we can omit Page 1</p> <p>11 and just put in the photo pages if that would alleviate the</p> <p>12 objection and concern.</p> <p>13 THE COURT: So the objection is sustained, and</p> <p>14 I'll allow you to offer whatever you would like to offer.</p> <p>15 MR. HUSHKA: All right. Sharon, if we can scroll</p> <p>16 back to the first page of that, Page 402 of the ECF. All</p> <p>17 right.</p> <p>18 BY MR. HUSHKA:</p> <p>19 Q Mr. Gehrtz, I'm going to read from this page. And</p> <p>20 please follow along and let me know if I read it accurately</p> <p>21 at the end. Okay?</p> <p>22 A Mm-hmm.</p> <p>23 Q "Gehrtz Construction Services, GCS, is pleased to</p> <p>24 present our independent third-party follow-up inspection and</p> <p>25 report for The Ruins. We understand the subject is an</p>	<p>1 they are to the written word, it would be different. So the</p> <p>2 objection is sustained.</p> <p>3 BY MR. HUSHKA:</p> <p>4 Q Mr. Gehrtz, did Gehrtz Construction Services provide</p> <p>5 independent third-party inspection to The Ruins?</p> <p>6 A Yes.</p> <p>7 Q Was that inspection performed on or about -- was the</p> <p>8 follow-up inspection performed on or about September 24th,</p> <p>9 2024 at or about 2:30 p.m.? 12:30 p.m.</p> <p>10 A 12:30 p.m., yes.</p> <p>11 Q Was that inspection completed by or about 2:00 p.m.?</p> <p>12 A Yes, it was.</p> <p>13 Q During that inspection, did GCS observe any significant</p> <p>14 --</p> <p>15 MR. VERSTANDIG: Objection, leading.</p> <p>16 MR. HUSHKA: Well, it's did not --</p> <p>17 THE COURT: Yeah.</p> <p>18 MR. HUSHKA: It's the Court's ruling.</p> <p>19 THE COURT: It appeared leading to me. I'm going</p> <p>20 to sustain this one and allow you to ask another question.</p> <p>21 BY MR. HUSHKA:</p> <p>22 Q Was any significant advancement observed at The Ruins</p> <p>23 inspection site during that second inspection from the</p> <p>24 initial inspection?</p> <p>25 A No.</p>

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<p>1 Q Were any signs of water penetration noted during this 2 second inspection? 3 A Yes. 4 Q Were those signs off water penetration more or the same 5 as from during the first inspection? 6 A More. 7 Q Do the remainder of these report pages, pages 2 and 3, 8 provide photos of that water penetration and that 9 progression? 10 A Yes. 11 Q Are those photos true and accurate representations of 12 what was observed during the second observation as well as 13 the first observation? 14 A Yes. 15 Q And I believe we already testified as to your opinions 16 of what is particularly depicted in those photos. 17 A Yes. 18 MR. HUSHKA: Your Honor, at this time we would 19 offer Pages 2 and 3 of Report Two, the photos. 20 THE COURT: So that would be 60-1(B) at 403 and 21 404? 22 MR. VERSTANDIG: For clarity, we have no objection 23 to the photographs. 24 THE COURT: The Court receives 60-1(B), 25 photographs at Pages 403 and 404.</p>	<p>1 Ruins? 2 A My opinion was that there was no significant 3 advancement on the project. However, at the time of our 4 inspection, we did notice that there were some minor drywall 5 repair activities happening. However, we also observed that 6 even in areas where they were patched, it appeared that 7 there was still additional moisture penetrating through what 8 was being patched. 9 Q So if I understand correctly, is it your observations 10 during the second follow-up that there was ongoing water 11 penetration in The Ruins? 12 A That's correct. 13 Q Does this report also contain your opinion regarding 14 the cost to complete The Ruins development? 15 A Yes, it does. 16 Q I want to focus on that portion of the report for a 17 moment. 18 MR. HUSHKA: If you an scroll to Page 2, Sharon? 19 BY MR. HUSHKA: 20 Q I would like to direct your attention to the first 21 column entitled Bid Package. Do you see that? 22 A I do. 23 Q Are these the same categories that were contained in 24 your first report? 25 A Yes, they are.</p>
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<p>1 BY MR. HUSHKA: 2 Q Did you have any other opinions from your second site 3 inspection for which we have not gone over? 4 A No. 5 MR. HUSHKA: Sharon, if we can pull up Page 405, 6 Exhibit C, the same ECF number. 7 BY MR. HUSHKA: 8 Q Mr. Gehrtz, do you see a document on the screen? 9 A I do. 10 Q Do you recognize that document? 11 A Yes. 12 Q What is this document? 13 A This was our third site inspection or second follow-up 14 inspection, which the goal was to complete an opinion of 15 cost to complete the project. 16 Q Is that your signature on the first page? 17 A Let me scroll down to -- yes, it is. 18 Q Are you attesting to the opinions expressed in this 19 report? 20 A I am. 21 Q Does this report contain your opinion regarding 22 progress to The Ruins Development since the first follow-up 23 inspection? 24 A Yes. 25 Q What was your opinion regarding any progress to The</p>	<p>1 Q And can you remind us where those categories came from? 2 A Those came from the sworn construction statement. 3 Q And if we were to look at the third column, Assumed 4 Scope of Work to Complete, what does that column summarize? 5 A Those are the assumptions I made in arriving at a 6 dollar value to complete the particular scope of work. 7 Q Okay. And so if we look at the second column, the 8 middle column, Opinion Cost to Complete, is that your 9 opinion regarding the cost to complete the various subparts 10 of The Ruins? 11 A That's correct. 12 Q What did you rely upon in reaching those opinions? 13 A Visual observations from our site inspections and the 14 expertise in what we typically would see. We also relied on 15 some exterior or outside subcontractors that -- to validate 16 some of the pricing that we've arrived to. 17 Q If we were to go through these opinions, the first one 18 is General Conditions. What is that? 19 A General conditions is a line item that typically covers 20 items that are not within specific bid packages. So it 21 would be facilities, toilets, dumpsters. Just utility 22 hookup costs, inspection fees, things like that that would 23 be required to finish that cost work. 24 Q Those would be necessary to finish The Ruins? 25 A In my opinion they would be, yes.</p>

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<p>1 Q And in your opinion would that cost be \$50,000 to 2 complete The Ruins?</p> <p>3 A Yes.</p> <p>4 MR. VERSTANDIG: Objection. The objection is 5 hearsay. And the testimony has been that some of these 6 numbers (indiscernible) isn't articulated which are based 7 upon the input of third-party subcontractors. To the extent 8 that is the foundation, the foundation is hearsay. To the 9 extent that is not the foundation for certain line items -- 10 and I don't know which it is and which it isn't -- the line 11 items for which there's no third party input as a foundation 12 would not be hearsay. This is not going to fall within the 13 learned treatises objection and the third parties are not 14 here to speak to their bids or their quotes.</p> <p>15 MR. HUSHKA: Your Honor, I believe that the rule 16 is clear that an expert is allowed to rely on hearsay when 17 forming their opinion. I believe it's within the scope of 18 his bidding and processing and application for a scope of 19 work and expert opinion that he's already been qualified for 20 to rely upon some types of bids and his knowledge of the 21 industry and the cost for various things to reach an 22 opinion.</p> <p>23 As for whether or not the actual opinion itself is 24 hearsay, I asked, is it your opinion that it would cost 25 \$50,000. So I didn't ask what the opinion in the report</p>	<p>1 rather something in the nature of a bid, a quote or an 2 estimation. That is hearsay within hearsay. That's 3 inadmissible.</p> <p>4 MR. HUSHKA: Your Honor, I believe that the second 5 part of 703 gets to Mr. VerStandig's point that the hearsay 6 is only in the quote, but if the facts or data would be -- 7 otherwise would be inadmissible, the proponent of the 8 opinion may disclose them to the jury only if the probative 9 value in helping the jury evaluate the opinion substantially 10 outweighs their prejudicial effect.</p> <p>11 I'm not asking him to say did you get any quotes 12 from subcontractors and what are those quotes that you 13 received. That would be hearsay, and I'm not soliciting 14 that. I'm asking what is your opinion based on your 15 experience in the region and building multiple of these 16 multi-unit dwellings what it would cost to complete these 17 various line items.</p> <p>18 MR. VERSTANDIG: If it was based on what it costs 19 to get plumbing for a similarly-situated building of this 20 size on a project managed in the past, that would be one 21 thing. And again, I say hearsay within hearsay. There is a 22 foundational element to this, right? The foundation of his 23 testimony is facts ascertained for the idiosyncratic prism 24 of this case; what would it cost to do -- and I'm making 25 this up because I don't know which he got from subs and</p>
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<p>1 was. I'm not asking what the report is. I'm asking if his 2 opinion today is that it's \$50,000 to complete the general 3 conditions. So I don't believe it's a hearsay objection as 4 it relates to the report.</p> <p>5 MR. VERSTANDIG: To be clear, I should be more 6 articulate about this. There's hearsay and there's hearsay 7 within hearsay. To the extent the expert is simply reading 8 from his report, that's hearsay. But I'm not really 9 standing on that. That is fine. To the extent there's 10 hearsay within hearsay, which is to say that the numbers in 11 the report are derivative of what third parties told him, 12 that's not within the scope of what's allowed by Rule 703. 13 Rule 703 provides an expert may base an opinion on facts or 14 data in the case that the expert is to be made aware of or 15 personally observed. If experts in the particular field 16 reasonably rely on those kinds of facts or data in forming 17 an opinion on the subject, they need not be admissible for 18 the opinion to be admitted.</p> <p>19 This isn't a question of whether or not he's 20 reviewed other pictures in this case. It isn't a question 21 of whether he has reviewed affidavits in this case. It's a 22 question of whether he went out and solicited third-party 23 information that is not an existing learned treatise, that 24 is not an existing piece of information concerning how 25 carpentry is to be done or plumbing is to be done, but</p>	<p>1 which he didn't. But what would it cost to do the concrete 2 work? Someone presumably said \$27,000. What would it cost 3 to do the CMU block? And someone presumably said \$50,000. 4 That's outside the scope of the rule.</p> <p>5 And it's enormously prejudicial because it's going 6 to ultimately go to a cost of completion which goes to the 7 argument that is being made that the cost of completion 8 being proffered by the Debtor is not reliable and accurate.</p> <p>9 THE COURT: So given the previous colloquy and the 10 foundation that was previously laid, the objection is 11 sustained. You may ask more questions.</p> <p>12 BY MR. HUSHKA:</p> <p>13 Q Mr. Gehrtz, you said you are familiar with the 14 construction of multi-unit, multi-purpose dwelling units. 15 Is that correct?</p> <p>16 A Yes.</p> <p>17 Q You have an opinion regarding the general conditions 18 and what the cost would be to complete those.</p> <p>19 A Yes, I do.</p> <p>20 Q How did you reach your opinion what the cost would be 21 to complete the general conditions?</p> <p>22 A Typically on a construction project, it's anywhere 23 between three to seven percent of the total cost of work. 24 So that was the basis for my assumption.</p> <p>25 Q So your basis for the assumption was not based on</p>

<p style="text-align: right;">Page 106</p> <p>1 soliciting a particular number or quote from any particular</p> <p>2 sub or vendor?</p> <p>3 A It was not.</p> <p>4 MR. HUSHKA: Your Honor, again we would ask that -</p> <p>5 -</p> <p>6 BY MR. HUSHKA:</p> <p>7 Q What is your opinion regarding the cost to complete the</p> <p>8 general conditions of The Ruins?</p> <p>9 A \$50,000.</p> <p>10 Q Sir, the next line item on here is Testing and</p> <p>11 Inspections. Do you see that?</p> <p>12 A I do.</p> <p>13 Q What is testing and inspections?</p> <p>14 A My opinion of that line item would be any permitting or</p> <p>15 inspections or follow-up that would be required by the city</p> <p>16 to validate any concerns that are on the project. That's a</p> <p>17 line item that could contain a number of different things.</p> <p>18 So it was hard to identify exactly what that might be. But</p> <p>19 the permit can -- the permit cost can be calculated from the</p> <p>20 City of Watertown and a number of other things can be</p> <p>21 calculated to get to that point.</p> <p>22 I conservatively put three times that in there just to</p> <p>23 make sure that we were covered on any additional inspections</p> <p>24 that would be required to satisfy the city's concern and in</p> <p>25 getting the project complete.</p>	<p style="text-align: right;">Page 108</p> <p>1 like that. So exterior concrete-related scope of work.</p> <p>2 Q And you provided an amount for what you believe the</p> <p>3 cost would be to complete that work?</p> <p>4 A Yes, I did.</p> <p>5 Q Is that opinion a product of your experience and</p> <p>6 knowledge in the field?</p> <p>7 A It is.</p> <p>8 Q It is not the byproduct of a direct quote from any one</p> <p>9 competitor?</p> <p>10 A Correct.</p> <p>11 Q What is your opinion regarding the cost to complete the</p> <p>12 concrete work?</p> <p>13 A \$27,000.</p> <p>14 Q The next five line items don't have a cost associated</p> <p>15 with them. Why is that?</p> <p>16 A I didn't feel that there was any work associated with</p> <p>17 those particular packages to complete the project.</p> <p>18 Q For the line item CMU Block, what would be encompassed</p> <p>19 in that?</p> <p>20 A CMU block would be any remediation work associated with</p> <p>21 the exterior with the waterproofing membrane to make sure</p> <p>22 that it's watertight. That would be also any CMU block</p> <p>23 that's required within the first floor common area. I</p> <p>24 assumed it was roughly a thousand square feet of block that</p> <p>25 would need to be installed. So I made an assumption on what</p>
<p style="text-align: right;">Page 107</p> <p>1 Q Does this report contain your opinion regarding the</p> <p>2 cost to complete the testing and inspections?</p> <p>3 A Yes, it does.</p> <p>4 Q Is that opinion based solely from statements made to</p> <p>5 you by a third party?</p> <p>6 A No.</p> <p>7 Q Is that opinion regarding your or derived from your</p> <p>8 experience and knowledge in this field?</p> <p>9 A Yes.</p> <p>10 Q What is your estimate and opinion for the cost to</p> <p>11 complete the testing and inspections for The Ruins?</p> <p>12 A \$39,555.</p> <p>13 Q Sir, in this report the next line item for which you</p> <p>14 provide a cost is concrete. Can you explain why you didn't</p> <p>15 have a line item for any of the four intermediaries?</p> <p>16 A I didn't feel that there was any scope of work</p> <p>17 associated with any of those line items that needed to be</p> <p>18 completed.</p> <p>19 Q What did you believe needed to be done for concrete</p> <p>20 still?</p> <p>21 A My estimation was based on the fact that there was some</p> <p>22 concrete that needed to be removed and replaced in order to</p> <p>23 get the grades to allow -- or to align with the garage, with</p> <p>24 the alley in the back area, and some other areas around the</p> <p>25 building. The sidewalks and accessibility routes, things</p>	<p style="text-align: right;">Page 109</p> <p>1 the true scope of work was required on that first floor to</p> <p>2 arrive at that number.</p> <p>3 Q And you provided an opinion regarding the cost to</p> <p>4 complete the CMU block?</p> <p>5 A Yes.</p> <p>6 Q Is that opinion a product of your knowledge and</p> <p>7 experience in the field of construction project management?</p> <p>8 A Yes.</p> <p>9 Q What was that opinion?</p> <p>10 A \$50,000.</p> <p>11 Q The next line item, Miscellaneous Metals. What is</p> <p>12 that?</p> <p>13 A Miscellaneous metals would be any stairs, ladders,</p> <p>14 railings. And the majority of this cost based on the final</p> <p>15 set of plans as we were reviewing to put this together,</p> <p>16 noted that there was some railing on the second floor patio</p> <p>17 area. And without quoting it out, I made some assumptions</p> <p>18 based on our experience with other projects and estimating</p> <p>19 services that we do to apply a dollar value to approximately</p> <p>20 how many linear feet of rail we felt was needed to complete</p> <p>21 the job.</p> <p>22 Q So this was not based on any particular quote?</p> <p>23 A No.</p> <p>24 Q What was your opinion regarding the cost to complete</p> <p>25 the miscellaneous metals?</p>



<p style="text-align: right;">Page 110</p> <p>1 A \$60,000.</p> <p>2 Q The next line item, General W&amp;L Rough Carpentry Labor.</p> <p>3 What is that?</p> <p>4 A This is any general related items that would need to be</p> <p>5 installed that don't fall under any other package</p> <p>6 necessarily. Typically when we're putting together an</p> <p>7 estimate, we'll assign a number of hours that can be used</p> <p>8 for any sort of things that may come up that a subcontractor</p> <p>9 is not specifically noted to do. So we have applied an</p> <p>10 allowance of 80 hours at \$125 an hour to arrive at the</p> <p>11 \$10,000.</p> <p>12 Q And how did you reach that 80-hour allotment?</p> <p>13 A From experience.</p> <p>14 Q Not a particular bid quote?</p> <p>15 A No.</p> <p>16 Q What is your opinion regarding the cost to complete the</p> <p>17 general W&amp;L rough carpentry labor?</p> <p>18 A \$10,000.</p> <p>19 Q Next line item where there's a "General W&amp;L Finish</p> <p>20 Carpentry Labor." What is that?</p> <p>21 A Finish carpentry labor would be the installation of any</p> <p>22 cabinets, countertops, frames in commercial spaces. So in</p> <p>23 arriving at that number, if we observed three residential</p> <p>24 units that still needed some type of cabinet installation to</p> <p>25 be completed in addition to the frames and the doors and the</p>	<p style="text-align: right;">Page 112</p> <p>1 the building.</p> <p>2 Q Did you have an opinion as to price?</p> <p>3 A \$6,000.</p> <p>4 Q How is that opinion formed?</p> <p>5 A Through expertise and prior experience.</p> <p>6 Q Next line item with a price is Moisture and</p> <p>7 Protections. What's included in there?</p> <p>8 A This would be the -- this is the roofing scope of work.</p> <p>9 And upon understanding that there is a rooftop patio on that</p> <p>10 second floor area that did not have any roof pavers</p> <p>11 installed, that's the cost that -- our opinion of the cost</p> <p>12 that it would take to supply and install those roof pavers.</p> <p>13 A couple reasons why the paver system is a membrane roof is</p> <p>14 primarily to protect the membrane so it doesn't -- it's not</p> <p>15 damaged by people walking on it essentially.</p> <p>16 Q When you say supply, were there pavers on site to</p> <p>17 complete this portion of the project?</p> <p>18 A There was not. Not that we witnessed or observed.</p> <p>19 Q Did you have an opinion as to the price for this line</p> <p>20 item?</p> <p>21 A Yes.</p> <p>22 Q How was that opinion reached?</p> <p>23 A Through experience and similar projects of similar</p> <p>24 scope.</p> <p>25 Q What was that opinion?</p>
<p style="text-align: right;">Page 111</p> <p>1 hardware throughout the building, that would fall within</p> <p>2 this category.</p> <p>3 Q How did you -- you provided an opinion as to price.</p> <p>4 How was that opinion reached?</p> <p>5 A Through our experience and our past work on other</p> <p>6 estimates and projects similar to this.</p> <p>7 Q What was your opinion?</p> <p>8 A \$12,500.</p> <p>9 Q Next line item, Millwork, Cabinets. Can you describe</p> <p>10 what would be included in there?</p> <p>11 A This would be the supply of any cabinets that were not</p> <p>12 on site assuming that three units may need to be replaced in</p> <p>13 its entirety. So the supply of those particular cabinets to</p> <p>14 be installed by the general W&amp;L finish carpentry labor.</p> <p>15 Q Did you have an opinion as to the price for that?</p> <p>16 A Our opinion was established based on other estimates</p> <p>17 that we've done, similar costs for projects that are similar</p> <p>18 in scope.</p> <p>19 Q And what was your opinion?</p> <p>20 A \$9,000.</p> <p>21 Q Countertops, kitchen and bathroom. What's that?</p> <p>22 A That is the supply of the material for the countertops.</p> <p>23 And again in arriving at that assumption, we assume that</p> <p>24 there were three units that needed to be replaced, three</p> <p>25 units of countertops that needed to be replaced throughout</p>	<p style="text-align: right;">Page 113</p> <p>1 A \$80,000.</p> <p>2 Q Line item for masonry, what would be included in that</p> <p>3 completion?</p> <p>4 A Masonry would be the brick veneer on the face of the</p> <p>5 building on the elevation where it was not completed. It</p> <p>6 would also include a mobilization cost for a mason to come</p> <p>7 on site, set up mixers, towers, equipment to finish the</p> <p>8 work. And then also to clean and seal the brick when</p> <p>9 completed.</p> <p>10 Q Did you have an opinion as to price for that?</p> <p>11 A I did, yes.</p> <p>12 Q And how did you reach that opinion?</p> <p>13 A Again, through history, experience and performing</p> <p>14 estimates that are very similar scope and scale for this</p> <p>15 project.</p> <p>16 Q That opinion was?</p> <p>17 A \$90,000.</p> <p>18 Q Is that still your opinion?</p> <p>19 A Yes.</p> <p>20 Q Next line item, Metal Siding/Metal Panels. What is</p> <p>21 that?</p> <p>22 A This would be the supply of the material and the</p> <p>23 installation of the material to complete the skin of the</p> <p>24 building essentially. This also includes additional Tyvek,</p> <p>25 either new Tyvek or remove and replace the existing Tyvek on</p>



<p style="text-align: right;">Page 114</p> <p>1 the face of the building that the panels are not -- they are</p> <p>2 not installed. All that in my opinion would fall under this</p> <p>3 particular package.</p> <p>4 Q Did you have an opinion as to the price to finish this?</p> <p>5 A Yes.</p> <p>6 Q How did you form that opinion?</p> <p>7 A This opinion was assuming that all the material was on</p> <p>8 site. So this is primarily labor. We did observe pallets</p> <p>9 of panels. We didn't count all the panels and do a</p> <p>10 quantitative analysis of what was there to determine if</p> <p>11 there was enough. Our assumption was that there was enough</p> <p>12 panels there to complete. So this is primarily labor. And</p> <p>13 again --</p> <p>14 Q This is a best-case assumption then almost.</p> <p>15 A Yeah, exactly. And we based our labor rate on past</p> <p>16 projects of similar size and scope.</p> <p>17 Q And what is your opinion?</p> <p>18 A \$195,000.</p> <p>19 Q Is that still your opinion?</p> <p>20 A It is.</p> <p>21 Q Next line item, Sealants. What's included in that?</p> <p>22 A Typically this is every -- Sealant is a separate</p> <p>23 subcontract that -- essentially where there is a dissimilar</p> <p>24 material is the way we say it. So if it's block to drywall</p> <p>25 or if it's tile to drywall, typically we see all of that</p>	<p style="text-align: right;">Page 116</p> <p>1 allowance of \$2,500 if we found that there was not</p> <p>2 particular material. If we needed to get a handle or</p> <p>3 replace a handle or something like that. Fairly small item,</p> <p>4 but felt that without doing an actual count of every piece</p> <p>5 of equipment and hardware and handle set and closure and</p> <p>6 hinge and all of those items, to determine that there might</p> <p>7 be something that needs to be replace or is missing over the</p> <p>8 course of the time from the start to the finish.</p> <p>9 Q And you said you assumed that all the stuff was on-</p> <p>10 site.</p> <p>11 A Correct.</p> <p>12 Q So this is a best-case assumption?</p> <p>13 A Correct.</p> <p>14 Q Did you have an opinion as to price?</p> <p>15 A \$2,500.</p> <p>16 Q And that was based on?</p> <p>17 A My experience that something will go missing over the</p> <p>18 course of construction and need to be replaced.</p> <p>19 Q Next line item, overhead doors. What is that?</p> <p>20 A Overhead door is the entrance of the garage door</p> <p>21 basically into the on-grade parking area.</p> <p>22 Q How many doors for this project?</p> <p>23 A I don't recall a specific -- this particular estimate</p> <p>24 was based on the replacement of one door that we observed</p> <p>25 some damage to.</p>
<p style="text-align: right;">Page 115</p> <p>1 sealed. And in most cases this also includes any sealant on</p> <p>2 the exterior where there is a penetration through the</p> <p>3 siding, if there's any window sealants, any -- just general</p> <p>4 -- I would say typically less than a half an inch gap would</p> <p>5 fall within the scope of sealants.</p> <p>6 Q The purpose of all those sealants is?</p> <p>7 A To seal and to provide an aesthetic finish to the</p> <p>8 building.</p> <p>9 Q Did you have an opinion as to the cost to finish that?</p> <p>10 A Yes.</p> <p>11 Q How was that opinion formed?</p> <p>12 A Typically when we're putting together an estimate for</p> <p>13 building, we're estimating a cost on a per square foot of</p> <p>14 the floor plan. And so anywhere between \$1 and \$2 per</p> <p>15 square foot. I used the higher range of that because of</p> <p>16 some unknowns with the building. So that's how I arrived at</p> <p>17 my \$182,712, was based on \$2 a square foot for the footprint</p> <p>18 of the building.</p> <p>19 Q Is that still your opinion?</p> <p>20 A Yes.</p> <p>21 Q Next line item, Commercial Doors, Frames and Hardware.</p> <p>22 What's included in that?</p> <p>23 A This is any miscellaneous hardware that is not already</p> <p>24 on the site. It's just the supply of the material. I'm</p> <p>25 assuming that all the material is there, but I've applied an</p>	<p style="text-align: right;">Page 117</p> <p>1 Q And so how did you reach that opinion as to price?</p> <p>2 A History and experience with other estimates and scopes</p> <p>3 of work in similar size and scale.</p> <p>4 Q And what was your opinion?</p> <p>5 A \$10,000.</p> <p>6 Q Stil your opinion?</p> <p>7 A Yes.</p> <p>8 Q Vinyl windows. What would be included in that?</p> <p>9 A This would be the supply of any windows that needed to</p> <p>10 be replaced. The assumption was that five windows needed to</p> <p>11 be replaced with the remaining windows being on-site and the</p> <p>12 ones that we noted for damage. So this is again kind of a</p> <p>13 best-case scenario assuming that there may be a few parts</p> <p>14 and pieces that need to be purchased in order to fix any</p> <p>15 damaged windows that we observed.</p> <p>16 Q Did you have an opinion as to price?</p> <p>17 A Yes.</p> <p>18 Q Formed how?</p> <p>19 A From historical estimates and experience.</p> <p>20 Q And that price was?</p> <p>21 A \$3,000.</p> <p>22 Q Still believe that's accurate?</p> <p>23 A Yes.</p> <p>24 Q Drywall. What would be included in there?</p> <p>25 A Drywall would be any patching, repairing, taping,</p>

<p style="text-align: right;">Page 118</p> <p>1 texturing, finishing of any drywall areas. We noted that in</p> <p>2 the first floor there was some additional work that needed</p> <p>3 to be done in the lobby areas that did not appear to be</p> <p>4 completed. So that was primarily where this scope entailed.</p> <p>5 Q Did you have an opinion as to the cost to finish that?</p> <p>6 A Yeah.</p> <p>7 Q How did you reach that opinion?</p> <p>8 A Experience, historical estimates, pricing similar in</p> <p>9 scope and scale to what we witnessed or observed on site.</p> <p>10 Q What was your opinion?</p> <p>11 A \$5,250.</p> <p>12 Q Is that still your opinion?</p> <p>13 A Yes.</p> <p>14 Q Carpet (Materials). I assume I know what that is, but</p> <p>15 can you confirm?</p> <p>16 A This is the supply of the carpet in the bedroom areas.</p> <p>17 I assume that it's also the LVT. But --</p> <p>18 Q Again, that's luxury vinyl tile?</p> <p>19 A Correct. It doesn't specifically say it on the line</p> <p>20 item, but I've assumed that it's included within this</p> <p>21 package. Typically I see that as part of one package when</p> <p>22 we are putting together these projects. So that was how I</p> <p>23 formed my assumption.</p> <p>24 Q Did you have an opinion as to this?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q Still your opinion?</p> <p>2 A Yes.</p> <p>3 Q How did you reach your opinion regarding the cost to</p> <p>4 install carpet or flooring in The Ruins?</p> <p>5 A Again, historical experience on past projects of</p> <p>6 similar size to arrive at that assumption.</p> <p>7 Q And what was your opinion as to the cost for the</p> <p>8 installation of carpeting?</p> <p>9 A It was \$50,000.</p> <p>10 Q Still your opinion?</p> <p>11 A Yes.</p> <p>12 Q Painting and staining. What would all be included in</p> <p>13 there?</p> <p>14 A Yeah. The painting and staining would be painting of</p> <p>15 any finished materials within the inside of the building,</p> <p>16 whether that be drywall, block, or any other finish</p> <p>17 materials. Typically -- in this instance we included an</p> <p>18 allowance of \$15,000 just to cover any miscellaneous patches</p> <p>19 that would be required throughout the building. So in</p> <p>20 addition to finishing scope, we also included allowances to</p> <p>21 touch up and repair any drywall patching that would be</p> <p>22 required.</p> <p>23 Q Is that typical for a project of this type and scope?</p> <p>24 A Yes.</p> <p>25 Q And what was your ultimate opinion for the cost for</p>
<p style="text-align: right;">Page 119</p> <p>1 Q What was that opinion?</p> <p>2 A Opinion was \$120,000.</p> <p>3 Q And how was that opinion formed?</p> <p>4 A This particular one, I don't know exactly the type of</p> <p>5 material or the cost of the specific material, so I applied</p> <p>6 a typical rate that we would see in a similar project from a</p> <p>7 cost --</p> <p>8 Q So based on a square footage allowance essentially?</p> <p>9 A Correct, square footage allowance, yeah.</p> <p>10 Q Is that reasonable in your industry to give a square</p> <p>11 footage allowance for flooring costs?</p> <p>12 A Yeah. And generally what that does is allows for some</p> <p>13 flexibility when we're putting together an estimate to say</p> <p>14 it could be floor A or floor B, but it falls within that</p> <p>15 estimate.</p> <p>16 Q Carpet install. Again, I think I know, but can you</p> <p>17 confirm what's in there?</p> <p>18 A This is the installation of the flooring materials.</p> <p>19 And that would be both carpet in the bedrooms and luxury</p> <p>20 vinyl tile in the kitchen and dining spaces.</p> <p>21 Q And did you have an opinion as to those costs?</p> <p>22 A Yes.</p> <p>23 Q Sorry, I forget if I asked. Did you ask your opinion</p> <p>24 as to what it would cost for the materials for the carpet?</p> <p>25 A \$120,000.</p>	<p style="text-align: right;">Page 121</p> <p>1 painting and staining?</p> <p>2 A \$51,000.</p> <p>3 Q And that was based on?</p> <p>4 A Experience and historical estimating.</p> <p>5 Q Postal specialties, bike rack, door markers. What</p> <p>6 would all be included in there?</p> <p>7 A This would be the material for postal boxes, mailboxes</p> <p>8 essentially. I did not include any additional cost for bike</p> <p>9 racks or door markers or anything of that nature. I didn't</p> <p>10 know what was there. I do know that postal boxes are</p> <p>11 required for occupancy. So that's what we included in the</p> <p>12 cost.</p> <p>13 Q So best case opinion?</p> <p>14 A Yeah.</p> <p>15 Q How did you reach your opinion as to this line item?</p> <p>16 A Historical costs on other projects of similar size.</p> <p>17 Q What was that opinion?</p> <p>18 A \$8,700.</p> <p>19 Q Still your opinion?</p> <p>20 A Yes.</p> <p>21 Q Exterior signage. What would all be included there?</p> <p>22 A This would be the building identification signage,</p> <p>23 which would be typically a larger format type sign. We</p> <p>24 noted that there was some signage in the drawing set, so we</p> <p>25 assumed that it would need to be installed for completion of</p>

<p style="text-align: right;">Page 122</p> <p>1 the project.</p> <p>2 Q Did you provide an opinion as to the cost for that</p> <p>3 completion?</p> <p>4 A Yes.</p> <p>5 Q How did you reach that opinion?</p> <p>6 A Square footage of size of sign based on other projects</p> <p>7 that are similar types of sign, where it's a backlit sign</p> <p>8 with letters or some -- some type of design similar to that.</p> <p>9 So basically square footage cost of the footprint of the</p> <p>10 sign.</p> <p>11 Q What was that opinion?</p> <p>12 A \$30,000.</p> <p>13 Q Fire extinguishers and cabinets. What's in there?</p> <p>14 A this would be the cabinets throughout the building that</p> <p>15 hold the fire extinguishers and then the fire extinguishers</p> <p>16 themselves. And this would be just the installation</p> <p>17 assuming that all of the materials was on site without</p> <p>18 physically going in and taking an accounting of everything.</p> <p>19 We assumed that it was all there.</p> <p>20 Q Okay. You had earlier testified that you believed that</p> <p>21 some of the fire extinguishers were set too high. Would</p> <p>22 costs of moving those boxes down be included in here?</p> <p>23 A No, they would not.</p> <p>24 Q So this is a best-case scenario?</p> <p>25 A Right.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q And I see you have supply and install 63 units.</p> <p>2 A Correct.</p> <p>3 Q So am I correct in assuming that these materials were</p> <p>4 not on site?</p> <p>5 A We did not observe any of this material on site.</p> <p>6 Q And your opinion as to the cost to complete this work?</p> <p>7 A \$25,000.</p> <p>8 Q Toilet accessories. What's included there?</p> <p>9 A Toilet accessories would be any grab bars for</p> <p>10 accessibility throughout the residential units. Primarily</p> <p>11 this is applying to the first floor common space where there</p> <p>12 was a common area bathroom that it appeared would require</p> <p>13 some type of toilet partition. So the dividers between the</p> <p>14 toilets is where this material would be covered. So that</p> <p>15 would be the supply and the installation of those materials.</p> <p>16 Q Did you have an opinion as to price?</p> <p>17 A Yes.</p> <p>18 Q What was that?</p> <p>19 A \$30,000.</p> <p>20 Q Appliances and A/C units. What would be included</p> <p>21 there?</p> <p>22 A This would be all of the -- it would be residential</p> <p>23 appliances. So refrigerators, stoves, washer/dryers,</p> <p>24 microwaves. And our assumption was based on the total</p> <p>25 contract amount assuming that 42 of the units were not on-</p>
<p style="text-align: right;">Page 123</p> <p>1 Q Do you have an opinion as to the cost for this?</p> <p>2 A \$1,000.</p> <p>3 Q And that was based on what?</p> <p>4 A It was based on historical experience and past</p> <p>5 estimates.</p> <p>6 MR. HUSHKA: If I may indulge the Court and Mr.</p> <p>7 VerStandig, if I asked for his opinion in that and if he</p> <p>8 answers, can he clarify if he has anything different, or do</p> <p>9 we want to keep clarifying this for the record for every</p> <p>10 line item as we continue to go?</p> <p>11 MR. VERSTANDIG: I have a hunch that the witness</p> <p>12 was well attuned to a certain objection and we're going to</p> <p>13 get the same response. I'm fine foregoing the standard</p> <p>14 question at this point.</p> <p>15 THE COURT: Okay. Then you may proceed.</p> <p>16 MR. VERSTANDIG: Thank you.</p> <p>17 BY MR. VERSTANDIG:</p> <p>18 Q Next line item that has a price is -- sorry, Closet</p> <p>19 Shelving. What's included there?</p> <p>20 A This would be the shelving for the -- essentially the</p> <p>21 closets in the residential -- yeah, bedroom closets. And</p> <p>22 it's typically a wire shelving that is, yeah, bolted to the</p> <p>23 wall with some support. And we applied a typical rate that</p> <p>24 we see for projects that are similar to this to arrive at</p> <p>25 that number on a per-unit basis.</p>	<p style="text-align: right;">Page 125</p> <p>1 site and there were a number of units that -- the fourth</p> <p>2 floor had the units on -- or in the units but hadn't been</p> <p>3 installed. So there's a certain labor that would be</p> <p>4 associated with the installation of them. But we assumed</p> <p>5 that the other two floors would need to be supplied and</p> <p>6 installed. And so that's how we arrived at the estimate.</p> <p>7 Q And what was the estimate?</p> <p>8 A \$160,000.</p> <p>9 Q Next line item, Window Treatments. What would be in</p> <p>10 there?</p> <p>11 A This would be the window treatments that each of the</p> <p>12 windows at the residential apartments. And so that would be</p> <p>13 supplying and installing -- I take that back. It would be</p> <p>14 supply-only. We assume that the installation would be in</p> <p>15 the general work and labor. So this would be supply only</p> <p>16 for the 174 -- or sorry, 147 blinds. It would be one at</p> <p>17 each window essentially.</p> <p>18 Q Cost for supplying those blinds?</p> <p>19 A \$30,000.</p> <p>20 Q Conveying system. I believe you earlier indicated this</p> <p>21 was the elevator?</p> <p>22 A This is the elevator, yeah. So assuming that -- let's</p> <p>23 say this is 60 percent complete or whatever the original</p> <p>24 estimation of what the elevator installation was, that they</p> <p>25 would need to come back on site once all the finishes are</p>

<p style="text-align: right;">Page 126</p> <p>1 completed, test the car, balance the car, make sure all the</p> <p>2 inspections are completed, and then do the complete turnover</p> <p>3 of the elevator system.</p> <p>4 Q Cost for all that work?</p> <p>5 A \$90,000.</p> <p>6 Q Building Sprinkler. What's in there?</p> <p>7 A This would be any related work associated with the</p> <p>8 building sprinkler system throughout the whole building.</p> <p>9 The majority of the work appeared to be finished based on</p> <p>10 our observations other than finishing the -- trimming out</p> <p>11 the heads in the units. We also assumed that the system was</p> <p>12 not filled because it had not been tagged and inspected. So</p> <p>13 we -- our assumption was that a building sprinkler</p> <p>14 subcontractor would need to come onto the site, fill the</p> <p>15 system, test it, witness the test with the fire department</p> <p>16 and then turn over the system.</p> <p>17 Q The cost for that work?</p> <p>18 A \$15,000.</p> <p>19 Q Plumbing. What would all be included in that to get</p> <p>20 The Ruins completed?</p> <p>21 A Installation of all of the toilets, sinks, faucets,</p> <p>22 hooking up the sinks and faucets. Anything related to</p> <p>23 showers, valves, sinks. All plumbing-related scope of work</p> <p>24 within the residential areas. In addition to that, there</p> <p>25 are also connections and water piping and items that needed</p>	<p style="text-align: right;">Page 128</p> <p>1 regarding water penetration if there is any of those systems</p> <p>2 that has -- that have failure due to water. I can't test</p> <p>3 that as observing, so I have to assume that there may be</p> <p>4 some work associated with that.</p> <p>5 In addition, down in the main electrical room, it was</p> <p>6 packed fairly tightly in there. And I know that there's</p> <p>7 restrictions and requirements that there's distances from</p> <p>8 main panels to other items within that electrical room. And</p> <p>9 should there have been any issues or discrepancy that needed</p> <p>10 to be corrected there, there obviously would be significant</p> <p>11 cost with that. There's also cost associated with</p> <p>12 finalizing the elevator and working with the elevator</p> <p>13 supplier to test, terminate, and finalize the elevator. So</p> <p>14 a fairly substantial scope of work in my opinion to get that</p> <p>15 completely finished and ready for occupancy.</p> <p>16 Q And your opinion as to the price to finish that scope</p> <p>17 of work?</p> <p>18 A \$125,000.</p> <p>19 Q Last line item with a price associated with it, Paving</p> <p>20 and Sidewalks. What was that?</p> <p>21 A It was just any exterior concrete work. Primarily</p> <p>22 striping. We covered the concrete work on the beginning</p> <p>23 part of this. So this would just be striping the parking</p> <p>24 lot and striping a handicapped stall. So it's based on kind</p> <p>25 of our experience on past projects.</p>
<p style="text-align: right;">Page 127</p> <p>1 to be completed that we observed in the commercial areas and</p> <p>2 in the garage areas. So in addition to trimming out all the</p> <p>3 units, there was still some infrastructure that needed to be</p> <p>4 in place and installed within those lower two levels.</p> <p>5 Q The price to get that work done?</p> <p>6 A \$100,000.</p> <p>7 Q HVAC. What would be included there?</p> <p>8 A Trimming out any of those bathroom fans within the</p> <p>9 residential units. I think primarily the scope of work</p> <p>10 pertained to the first floor in the common areas. It was</p> <p>11 unclear whether all of that scope of work had been completed</p> <p>12 at the time of our observations. So we assumed that there</p> <p>13 was a substantial amount of work there that needed to be</p> <p>14 done as far as that scope.</p> <p>15 Q Cost?</p> <p>16 A \$25,000.</p> <p>17 Q Electrical system -- Electrical Security System.</p> <p>18 What's that?</p> <p>19 A Again, this is assuming that there is some scope of</p> <p>20 work that needed to be completed within the footprint of the</p> <p>21 building to get the building operational. So electrical is</p> <p>22 a little bit more unclear in terms of how we arrive to a</p> <p>23 number just because we can't go in there as a -- with</p> <p>24 observing, visual observing, it's hard to determine exactly</p> <p>25 what might be a potential discrepancy or issues specifically</p>	<p style="text-align: right;">Page 129</p> <p>1 Q All right. Price associated with that?</p> <p>2 A \$2,750.</p> <p>3 MR. HUSHKA: Sharon, if we can scroll up a little</p> <p>4 bit before we get to the conclusion. Scroll up. Sorry.</p> <p>5 BY MR. HUSHKA:</p> <p>6 Q Mr. Gehrtz, I know we've gone through these, but what I</p> <p>7 want you to help explain for the Court is in your opinion</p> <p>8 what subs or crews would be required to perform these works</p> <p>9 or how many different -- essentially how many different</p> <p>10 groups we would need to get on site to get this thing</p> <p>11 completed in a timely package. So I don't know if you --</p> <p>12 I'll defer to you if it's best to go line-by-line and</p> <p>13 explain who, or if you can just kind of give an overview of</p> <p>14 the Court on how many or who you think.</p> <p>15 A I guess in general terms, the way I view this, every</p> <p>16 one of these line items would be a separate subcontractor.</p> <p>17 There might be some overlap with a general work and labor</p> <p>18 contractor that may pick up some of these packages and</p> <p>19 combine some of these packages. But in my experience, each</p> <p>20 one of these packages would typically be a separate</p> <p>21 subcontractor wherever there is a line item for cost to</p> <p>22 complete.</p> <p>23 Q So it's your opinion that over a dozen subcontractors</p> <p>24 would be needed to finish The Ruins in a professional</p> <p>25 manner?</p>

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<p>1 A Yeah.</p> <p>2 Q Did you have an opinion regarding the ultimate cost to</p> <p>3 complete The Ruins development?</p> <p>4 A Yes.</p> <p>5 Q And what was that opinion?</p> <p>6 A \$1,695,967.</p> <p>7 Q Is that still your opinion today?</p> <p>8 A Yes.</p> <p>9 Q Included in that is there any cost associated with</p> <p>10 remediating any deficiencies that have been noted or any</p> <p>11 water penetration issues?</p> <p>12 A No, there is not.</p> <p>13 Q Mr. Gehrtz, based on your training and experience, how</p> <p>14 long would it take to coordinate all of these subcontractors</p> <p>15 required to finish this work, to get all the necessary</p> <p>16 materials on site, and then to ultimately complete the</p> <p>17 project? Assuming you had an unlimited checkbook today, how</p> <p>18 long would it take for you to actually line everything up to</p> <p>19 get it properly sequenced in and in the proper order and</p> <p>20 then wrapped up and a bow tied so to speak?</p> <p>21 A I mean, I would -- my best estimation would be three to</p> <p>22 four months assuming there's a month that would be required</p> <p>23 to get any additional materials on site to complete the</p> <p>24 installation. So I would say one month of acquiring any</p> <p>25 materials that are necessary or doing an accounting of what</p>	<p>1 MR. VERSTANDIG: Your Honor, no objection to Page</p> <p>2 406.</p> <p>3 THE COURT: The Court receives 406 in Document 60-</p> <p>4 1.</p> <p>5 (Exhibit 60-1 admitted into evidence)</p> <p>6 BY MR. HUSHKA:</p> <p>7 Q Mr. Gehrtz, we've talked this morning at a few</p> <p>8 different times about water damage and water penetration.</p> <p>9 Do you believe that remediation efforts are necessary to fix</p> <p>10 both the issues and any damage provided to the building?</p> <p>11 A In my opinion, yes, it is.</p> <p>12 Q As part of your investigation of this project, did you</p> <p>13 -- do you have an opinion as to what the cost would be to</p> <p>14 complete such remediation efforts?</p> <p>15 A Yes.</p> <p>16 Q What is that opinion?</p> <p>17 MR. HUSHKA: Objection, foundation. Your Honor,</p> <p>18 previewing, it's going -- it would at least seem that it's</p> <p>19 about to be a quote from a third party.</p> <p>20 THE COURT: Yeah. I'm not hearing that yet. But</p> <p>21 your foundation was not --</p> <p>22 MR. VERSTANDIG: The objection is not hearsay.</p> <p>23 It's lack of foundation.</p> <p>24 THE COURT: It's lack of foundation. You know, we</p> <p>25 heard some foundation about remediation, but I think for the</p>
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<p>1 we have on the site. And then I would say two to three</p> <p>2 months after all the materials are there to finish</p> <p>3 everything to completion.</p> <p>4 Q And that's assuming that the subs that are necessary</p> <p>5 are available to complete the work right then and there.</p> <p>6 A Correct.</p> <p>7 Q Do subs typically line up projects in advance and are</p> <p>8 they always available?</p> <p>9 A They do line up in advance and they are not typically</p> <p>10 readily available if schedules change.</p> <p>11 Q How far in advance do they usually line things up?</p> <p>12 A Typically what we see is anywhere from three to six</p> <p>13 months in advance of any work. Ideally more than six</p> <p>14 months. But it doesn't always work that way.</p> <p>15 Q Fair enough. Mr. Gehrtz, the opinions that you've</p> <p>16 offered here, were those based upon your training and</p> <p>17 experience in construction management?</p> <p>18 A Yes.</p> <p>19 Q Are those all still your opinions?</p> <p>20 A Yes, they are.</p> <p>21 MR. HUSHKA: Your Honor, at this time we would</p> <p>22 offer ECF 60-1, Page 406 as a summary exhibit under 107. I</p> <p>23 believe it summarizes the opinions that he provided today</p> <p>24 and would be outside the scope of any hearsay objection</p> <p>25 under 107.</p>	<p>1 purposes of understanding the scope of the particular</p> <p>2 opinion, I would like to hear more. So I'm going to</p> <p>3 sustain.</p> <p>4 MR. HUSHKA: Certainly, Your Honor.</p> <p>5 BY MR. HUSHKA:</p> <p>6 Q Mr. Gehrtz, what remediation efforts do you believe are</p> <p>7 required to correct the water damage and water damage in The</p> <p>8 Ruins?</p> <p>9 A In my opinion based on what I've seen on other projects</p> <p>10 that have similar scenarios, we would have to take the</p> <p>11 sheetrock off the walls, we would have to treat any</p> <p>12 potential areas where there's moisture where there could be</p> <p>13 mold growth, whether it's currently there or there's still</p> <p>14 moisture that could lead to mold. Treat it, dry it, make</p> <p>15 sure that it's not in a condition where it would allow for</p> <p>16 mold growth and then put it back together.</p> <p>17 Q In your area, do you -- strike that. To provide that</p> <p>18 type of work, does the construction industry sometimes</p> <p>19 employ a remediation specialist?</p> <p>20 A Yes.</p> <p>21 Q Would you in your line of work trying to line up that</p> <p>22 scope of work typically send out quotes or bids to provide</p> <p>23 those services?</p> <p>24 A Yes.</p> <p>25 Q In your field does an expert generally rely on the</p>

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<p>1 facts and data of bids when reaching an ultimate opinion</p> <p>2 regarding the cost associated with providing a service?</p> <p>3 A Yes.</p> <p>4 Q Do you have an opinion regarding the costs of</p> <p>5 remediation efforts to fix the water damage and penetration</p> <p>6 issues in The Ruins?</p> <p>7 A Yes.</p> <p>8 Q What is that opinion?</p> <p>9 MR. VERSTANDIG: Calls for hearsay.</p> <p>10 THE COURT: Hold on. Don't answer yet.</p> <p>11 MR. VERSTANDIG: Objection. Calls for hearsay.</p> <p>12 The testimony is that it's based on bids that were</p> <p>13 solicited. And I think that's customary of an expert in the</p> <p>14 field that is not in line with what's permitted by the</p> <p>15 Federal Rules of Evidence.</p> <p>16 MR. HUSHKA: Your Honor, the Federal Rules of</p> <p>17 Evidence allow that if an expert in a particular field would</p> <p>18 reasonably rely on those kinds of facts or data in forming</p> <p>19 an opinion on the subject, they need not be admissible for</p> <p>20 the opinion to be admitted. That's directly from 703.</p> <p>21 MR. VERSTANDIG: The facts or data referenced in</p> <p>22 703 in that context are learned treatises and items that</p> <p>23 speak to the nature of the profession and the facts relied</p> <p>24 upon in going about the work, not information procured for a</p> <p>25 specific case that is a quote from a third party. This is a</p>	<p>1 advice of that person who typically does remediation work</p> <p>2 and like projects?</p> <p>3 THE WITNESS: Correct.</p> <p>4 THE COURT: The objection is sustained.</p> <p>5 BY MR. HUSHKA:</p> <p>6 Q So you indicated to the Court that you received a quote</p> <p>7 as it relates to this particular project.</p> <p>8 A Yes.</p> <p>9 Q Have you received quotes on other project for</p> <p>10 remediation work?</p> <p>11 A Yes.</p> <p>12 Q For water and mold remediation work?</p> <p>13 A Yes.</p> <p>14 Q Was the quote that you received for this particular</p> <p>15 project consistent with the -- accounting for scope, was the</p> <p>16 quote that you received in this project consistent with the</p> <p>17 costs in those other project where remediation services were</p> <p>18 provided?</p> <p>19 A Yes, I would say that is correct.</p> <p>20 Q What was the cost for the remediation services quoted</p> <p>21 in this case?</p> <p>22 A I believe --</p> <p>23 MR. VERSTANDIG: Objection. Objection. Hearsay.</p> <p>24 THE COURT: Sustained.</p> <p>25 MR. VERSTANDIG: I'm sorry, I didn't hear the</p>
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<p>1 back door way of getting a third party's quote for putative</p> <p>2 remediation work into evidence. The third party is not here</p> <p>3 to be cross-examined about their quote, how it is they came</p> <p>4 up with the quote, what considerations went into the quote,</p> <p>5 what considerations did not go into the quote.</p> <p>6 MR. HUSHKA: Your Honor, that would go to I</p> <p>7 believe the weight as opposed to the admissibility. If</p> <p>8 there's issues regarding that weight or the quote and the</p> <p>9 particular accuracy of that quote, I believe that would go</p> <p>10 to weight as opposed to the actual admissibility of the</p> <p>11 opinion and this Court can obviously assign any weight that</p> <p>12 it believes is appropriate.</p> <p>13 THE COURT: So just for clarification, are you</p> <p>14 relying on specific quotes from remediation experts in --</p> <p>15 that actually looked at this particular scope of work for</p> <p>16 The Ruins?</p> <p>17 THE WITNESS: Can I explain the...</p> <p>18 THE COURT: Yes.</p> <p>19 THE WITNESS: Okay. So I had reached out for an</p> <p>20 opinion on what a general scope might be because I don't do</p> <p>21 mold remediation specifically. We did not have anybody go</p> <p>22 onto the site. So it was more general in nature in order to</p> <p>23 arrive at a cost to remediate. If that answers the</p> <p>24 question.</p> <p>25 THE COURT: And your opinion is based on the</p>	<p>1 Court.</p> <p>2 THE COURT: I said sustained.</p> <p>3 MR. VERSTANDIG: Thank you.</p> <p>4 MR. HUSHKA: Your Honor, as an offer of proof, we</p> <p>5 would offer that they received a ServiceMaster restore quote</p> <p>6 that remediation services would be required in 39 different</p> <p>7 units in this case, including three hallways and that the</p> <p>8 cost of those remediation services would be \$293,951.43.</p> <p>9 Additionally, those remediation services would take 22 days,</p> <p>10 neither of which were accounted for in the opinions</p> <p>11 currently provided and before the Court as an offer of proof</p> <p>12 if we were allowed to go in on this.</p> <p>13 THE COURT: So response to the offer of proof?</p> <p>14 MR. VERSTANDIG: Your Honor, we appreciate the</p> <p>15 proffer. It is clearly set forth on the docket, which is</p> <p>16 how I know where this is going. It is very clearly the</p> <p>17 quote of a third party. It remains rank hearsay. If</p> <p>18 anything, the fact that it ends in 43 cents shows the</p> <p>19 specificity of the hearsay. It is not -- sorry.</p> <p>20 THE COURT: Right. So I sustained the objection.</p> <p>21 And now for purposes of appeal, the Red River State Bank is</p> <p>22 making an offer of proof. I'm looking to you for your</p> <p>23 response to that offer of proof.</p> <p>24 MR. VERSTANDIG: Your Honor, we would have no</p> <p>25 response for purposes of appeal.</p>



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<p>1 THE COURT: Okay, then I will accept that as an</p> <p>2 offer of proof.</p> <p>3 MR. HUSHKA: Thank you.</p> <p>4 BY MR. HUSHKA:</p> <p>5 Q Mr. Gehrtz, again, without speaking to the</p> <p>6 particularities of any quotes received or considered by you,</p> <p>7 the timeline that you have provided and the 1.6 million and</p> <p>8 change number that you provided, did that include any cost</p> <p>9 or time for remediation services?</p> <p>10 A No, it did not.</p> <p>11 Q But do you believe that such remediation services are</p> <p>12 necessary?</p> <p>13 A I do believe there is, yes.</p> <p>14 Q If you were to see a mold testing inspection that did</p> <p>15 not yield -- did not receive -- excuse me. If there was a</p> <p>16 mold test performed and that test came back negative but did</p> <p>17 not test every unit where you observed water penetration or</p> <p>18 every common space that you observed water penetration, do</p> <p>19 you believe that that would be sufficient to exclude the</p> <p>20 possibility of mold in The Ruins?</p> <p>21 A I do not personally. No. I'd like to see it at each</p> <p>22 location to make sure that there is no potential for mold to</p> <p>23 grow wherever there was water visible or penetration</p> <p>24 visible.</p> <p>25 Q And in your report, I think report one that came in the</p>	<p>1 believe that those four subcontractors would not be able to</p> <p>2 provide?</p> <p>3 A Elevator, building sprinkler, appliances, exterior</p> <p>4 signage, supply of postal specialties, carpet material and</p> <p>5 installation. If you can scroll up a little bit more.</p> <p>6 Q What about electrical before we go up. Would they be</p> <p>7 able to do that?</p> <p>8 A I don't believe so. I'm not familiar with all four of</p> <p>9 those, but I don't believe they are an electrician. So...</p> <p>10 Q Sorry for interrupting. Any others that you see on</p> <p>11 this list?</p> <p>12 A Moisture protection and the supply of miscellaneous</p> <p>13 metals and CMU block, masonry.</p> <p>14 Q And you believe obviously that the cost associated with</p> <p>15 those line items are what is in this summary exhibit?</p> <p>16 A Correct.</p> <p>17 MR. HUSHKA: No further questions at this time,</p> <p>18 Your Honor.</p> <p>19 THE COURT: Okay. Do we want to take a break</p> <p>20 before you begin with cross-examination or are you ready to</p> <p>21 just proceed?</p> <p>22 MR. VERSTANDIG: Your Honor, we are prepared to</p> <p>23 proceed. I would caution I think it's going to be on the</p> <p>24 lengthier side. And I would likely ask for a recess before</p> <p>25 I conclude to confer with my client. But I'm happy to begin</p>
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<p>1 punch list, does that identify the areas where there's water</p> <p>2 penetration in the units that such testing would be</p> <p>3 required?</p> <p>4 A It does, yes.</p> <p>5 Q All right. Mr. Gehrtz, I'm reaching the termination of</p> <p>6 my initial questioning. But just a couple more brief issues</p> <p>7 here before we wrap up.</p> <p>8 I believe you testified that over a dozen trades or</p> <p>9 subs were necessary and \$1.69 million was needed to complete</p> <p>10 this project. Is that a correct summary?</p> <p>11 A Yes.</p> <p>12 Q Do you believe that this project could be completed in</p> <p>13 a timely manner with only labor and material contributions</p> <p>14 from B&amp;W Construction, Lakeside Construction, Limoges</p> <p>15 Construction and Watertight?</p> <p>16 A Personally I don't feel that it would get all the way</p> <p>17 there.</p> <p>18 Q Why not?</p> <p>19 A I think there's other trades that need to be involved</p> <p>20 in getting the project to completion in my opinion.</p> <p>21 Q What specific trades?</p> <p>22 A Well, I'm not exactly familiar with the specific</p> <p>23 subcontractors that were identified.</p> <p>24 Q If we look at the summary exhibit that's in front of</p> <p>25 you that has been allowed in, which line items do you</p>	<p>1 now.</p> <p>2 THE COURT: Okay. I say we try to go another half</p> <p>3 hour for sure and then take a short break.</p> <p>4 Just by way of logistics, is everybody prepared to</p> <p>5 go without lunch? Okay.</p> <p>6 Mr. VerStandig, I can't really see if you nodded</p> <p>7 or not.</p> <p>8 MR. VERSTANDIG: Your Honor, yes. Admittedly I</p> <p>9 also have the privilege of being able to turn off my camera</p> <p>10 for two seconds and grab a granola bar.</p> <p>11 THE COURT: Okay. You are the lucky one here for</p> <p>12 sure.</p> <p>13 MR. VERSTANDIG: Yes.</p> <p>14 THE COURT: Okay. I'll try to take, you know, a</p> <p>15 15-minute break or around noon depending on where you are</p> <p>16 with your examination so that you can enjoy a granola bar.</p> <p>17 But given the fact that I'm going to have to stop at 2:00, I</p> <p>18 think it would be helpful if we can find a way to complete</p> <p>19 this witness's testimony if at all possible. Okay.</p> <p>20 MR. VERSTANDIG: Thank you, Your Honor.</p> <p>21 THE COURT: So we're just going to begin. So Mr.</p> <p>22 VerStandig, you may begin.</p> <p>23 MR. VERSTANDIG: Thank you. And I think we can at</p> <p>24 least for the time being take the exhibit down.</p> <p>25 CROSS-EXAMINATION OF MATTHEW GEHRTZ</p>



<p style="text-align: right;">Page 142</p> <p>1 BY MR. VERSTANDIG:</p> <p>2 Q Mr. Gehrtz, what is the aesthetic of The Ruins design?</p> <p>3 A I guess an apartment building. I don't -- is that --</p> <p>4 I'm not exactly sure the -- what you're asking necessarily.</p> <p>5 But my assumption of the aesthetic, the completion of -- the</p> <p>6 completion aesthetic would be a finished residential</p> <p>7 apartment complex.</p> <p>8 Q Can we agree that different finished residential</p> <p>9 apartment complexes have different looks, some more modern</p> <p>10 than others?</p> <p>11 A Yeah.</p> <p>12 Q Can we agree that with the ebbs and flows of time,</p> <p>13 certain things come in and out of style?</p> <p>14 A Yeah.</p> <p>15 Q What might have been awfully chic in the 1930s might be</p> <p>16 repugnant today?</p> <p>17 A I'd say that's fair to say. I'm not a designer, but I</p> <p>18 would generally agree with you on that.</p> <p>19 Q As part of your inspection in this case, what steps did</p> <p>20 you take to investigate the intended aesthetic for this</p> <p>21 building at completion? Did you review anything suggesting</p> <p>22 what Mr. Craig and his team intended to look at at the time</p> <p>23 the certificate of occupancy is obtained?</p> <p>24 A I did not. My investigation was based on site</p> <p>25 observations and my experience on what I reasonably expect</p>	<p style="text-align: right;">Page 144</p> <p>1 Q But again, the order of sequencing -- and I think that</p> <p>2 sounds like a grotesque redundancy -- would be somewhat, not</p> <p>3 nearly entirely, related to the desired aesthetic.</p> <p>4 A I'd say yeah.</p> <p>5 Q Okay. Did you view the buildings known as Generations</p> <p>6 or Parkside?</p> <p>7 A No.</p> <p>8 Q They're both in Watertown, South Dakota. You didn't</p> <p>9 visit them while you were down there?</p> <p>10 A We did not.</p> <p>11 Q Okay. Do you have any idea of whether those buildings</p> <p>12 are in high demand, low demand, or any other sort of demand</p> <p>13 for renters?</p> <p>14 A I do not.</p> <p>15 Q Did you know those buildings existed until three</p> <p>16 minutes ago?</p> <p>17 A I did.</p> <p>18 Q Okay. Now, generally -- and we'll be a little more</p> <p>19 specific later on -- when you gave your cost to complete</p> <p>20 estimate, I didn't see a line item in there for your</p> <p>21 company's fees. Where was that?</p> <p>22 A It wasn't included. Was asked to put a cost to</p> <p>23 complete the scope of the work and I didn't account for any</p> <p>24 management, whether it was by me or by somebody else. So it</p> <p>25 was strictly scopes of work based on the sworn construction</p>
<p style="text-align: right;">Page 143</p> <p>1 for a finished building of that caliber.</p> <p>2 Q Can we agree that the aesthetic would probably have a</p> <p>3 material impact on the cost of signage, whether it be up or</p> <p>4 down?</p> <p>5 A It could, yeah.</p> <p>6 Q Okay. And it would probably have a material impact on</p> <p>7 the cost of gypcrete. Again, up or down.</p> <p>8 A I would maybe not agree with gypcrete. That's a pretty</p> <p>9 standard item that's not visible. That has to do with the -</p> <p>10 - that has to do with the design of the building and the</p> <p>11 construction of the building, not necessarily the aesthetic</p> <p>12 of the building in my opinion.</p> <p>13 Q Well, the design and the aesthetic would seem to be</p> <p>14 rather similar, albeit not identical notions, correct?</p> <p>15 A Let me clarify. Design meaning code-related components</p> <p>16 versus aesthetic-related components. For example, a one-</p> <p>17 hour rated floor assembly needs to have gypcrete on it</p> <p>18 whether it's a high-end apartment or a base-level apartment.</p> <p>19 So there are some components that don't in my opinion have a</p> <p>20 design-related -- sorry -- component to it.</p> <p>21 Q And in some cases, but not nearly all, the aesthetic</p> <p>22 would also impact sequencing, would it not?</p> <p>23 A I would say sequencing is important regardless of the -</p> <p>24 - sequencing is important regardless of the project. It</p> <p>25 will have an impact on aesthetic if it's not done properly.</p>	<p style="text-align: right;">Page 145</p> <p>1 statement that was provided.</p> <p>2 Q Were any of those items marked up understanding that a</p> <p>3 general contractor would likely take a cut?</p> <p>4 A I don't know.</p> <p>5 Q Well, you put it together. Why would you know?</p> <p>6 A Are you asking specifically of my estimate that I put</p> <p>7 together?</p> <p>8 Q Yeah.</p> <p>9 A I didn't mark up any of the cost. It was a direct</p> <p>10 cost. Typically -- I will just expand a little bit on how I</p> <p>11 operate from a construction management standpoint. I don't</p> <p>12 apply a markup on individual subcontractor packages. I'll</p> <p>13 either operate on a lump sum fee for a total project or I'll</p> <p>14 apply an overall percentage to the entire project, but I</p> <p>15 won't apply it on an individual subcontractor.</p> <p>16 So the way I put my estimates together is each</p> <p>17 individual line item is what the cost for that particular</p> <p>18 subcontractor would be. And in this particular case, I did</p> <p>19 not apply a factor for management or for oversight or</p> <p>20 anything because I was trying to establish the cost of the</p> <p>21 work for the project.</p> <p>22 Q You had some laborers in there at I believe \$125 an</p> <p>23 hour, correct?</p> <p>24 A Correct, yeah.</p> <p>25 Q Do you think that's the going rate for a laborer in</p>

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<p>1 Watertown, South Dakota?</p> <p>2 A I don't know. Basically for a skilled laborer it's</p> <p>3 probably on the higher end. For an unskilled laborer it's</p> <p>4 maybe -- sorry, the other way around. For a skilled laborer</p> <p>5 I would say it's closer to that. For a non-skilled laborer</p> <p>6 it's maybe a little bit high.</p> <p>7 Q Would you be surprised to learn that the rough average</p> <p>8 -- and I don't --</p> <p>9 MR. HUSHKA: Objection, Your Honor. Foundation.</p> <p>10 MR. VERSTANDIG: Asking if he would be surprised</p> <p>11 to learn something. I'm not asking if it's true.</p> <p>12 MR. HUSHKA: Surprised if he learned. It would be</p> <p>13 a fact in evidence. It's not in evidence. There is no</p> <p>14 foundation for this.</p> <p>15 MR. VERSTANDIG: We'll have it in evidence at the</p> <p>16 end of the --</p> <p>17 THE COURT: Hold on. Say it again, Mr.</p> <p>18 VerStandig?</p> <p>19 MR. VERSTANDIG: I mean, it will be in evidence by</p> <p>20 the end of the hearing. It's going to come from a</p> <p>21 subsequent witness. I'm just trying to garner whether or</p> <p>22 not it would surprise him.</p> <p>23 THE COURT: Yeah.</p> <p>24 MR. VERSTANDIG: My asking the question doesn't</p> <p>25 establish the fact.</p>	<p>1 like I would get appropriate answers I guess. I did not</p> <p>2 reach out to the builder because my assumption was that I</p> <p>3 wouldn't be getting accurate information considering the</p> <p>4 gravity of the situation.</p> <p>5 Q I'm not sure I understand. I understand why you may</p> <p>6 have been concerned that the builder wouldn't give you</p> <p>7 information, but what would lead you to believe the builder</p> <p>8 would give you inaccurate information?</p> <p>9 A Because I'm doing it under the hire of the opposing</p> <p>10 attorney I guess. Just the situation feels like it's -- I</p> <p>11 don't know. I don't know how to answer it I guess. But...</p> <p>12 Q It says you were hired by the opposing attorney. I</p> <p>13 thought you had testified that you were hired by Mr.</p> <p>14 Aarestad.</p> <p>15 A I'm sorry, correction. I'm hired by Red River State</p> <p>16 Bank.</p> <p>17 Q You said you had spoken to Mr. Aarestad, right?</p> <p>18 A Correct.</p> <p>19 Q Did you speak with opposing counsel?</p> <p>20 A Not during or not until -- not until just recently for</p> <p>21 this case. All my communication has gone through Red River</p> <p>22 State Bank.</p> <p>23 Q When you say just recently, ballpark. I'm not asking</p> <p>24 you a precise date. Season, year.</p> <p>25 A Within the last few months. I guess when the original</p>
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<p>1 THE COURT: No, but it infers that it is a fact.</p> <p>2 And so without the foundation, that presents a problem the</p> <p>3 way that this particular question was asked. So I'm</p> <p>4 actually going to sustain that one.</p> <p>5 BY MR. VERSTANDIG:</p> <p>6 Q Mr. Gehrtz, did you investigate how much was paid to</p> <p>7 laborers on the project thus far?</p> <p>8 A No.</p> <p>9 Q Could you have investigated that?</p> <p>10 A I'm not sure how I would have done that. I guess by</p> <p>11 observations and site inspections.</p> <p>12 Q Well, you could have done more than observations and</p> <p>13 site inspections. You could have called Mr. Craig, right?</p> <p>14 A I suppose I could have.</p> <p>15 Q You could have looked through permits and liens to see</p> <p>16 what laborers worked on the project, couldn't you?</p> <p>17 A I did not note the account for any liens on my</p> <p>18 estimate.</p> <p>19 Q But I'm not asking about cost. I'm saying you had</p> <p>20 means of figuring out which subcontractors had done work,</p> <p>21 right?</p> <p>22 A I suppose.</p> <p>23 Q But you didn't choose to reach out to a general or any</p> <p>24 of the subs to get a sense of what the cost had been, right?</p> <p>25 A I guess given the nature of the case, I didn't feel</p>	<p>1 -- the first hearing was scheduled and then settled was the</p> <p>2 first time we started to -- I started to have conversations.</p> <p>3 Q So you didn't reach out to Mr. Craig. Why didn't you</p> <p>4 reach out to any of the subcontractors who had done work</p> <p>5 there?</p> <p>6 A Felt like that might have been an overstep of my</p> <p>7 request. My request was to do a site observation and give</p> <p>8 my expert opinion on what the cost to complete the project</p> <p>9 would be. And that's how I established my estimates.</p> <p>10 Q Well, in at least one instance -- and I don't want you</p> <p>11 to say what they told you. But you did reach out to a third</p> <p>12 party to get a bid or a quote, right?</p> <p>13 A In one instance I did for -- yeah, correct.</p> <p>14 Q Okay. Would it have made sense to reach out to the</p> <p>15 subs who are already working on this project to see what</p> <p>16 their completion cost would be?</p> <p>17 A I guess I relied on my experience and my historical</p> <p>18 data. We do a lot of estimating work in putting together</p> <p>19 budgets for projects that are either to be started or under</p> <p>20 design. So I guess I relied on my historical experience</p> <p>21 with similar projects to develop it rather than digging</p> <p>22 further into it with the actual subcontractors that were on</p> <p>23 the job.</p> <p>24 Q How many apartment projects in Watertown, South Dakota</p> <p>25 have you done estimates for in the past?</p>

<p style="text-align: right;">Page 150</p> <p>1 A None.</p> <p>2 Q How many projects in Watertown, South Dakota?</p> <p>3 A In Watertown specifically, none.</p> <p>4 Q How many projects within 50 miles of Watertown?</p> <p>5 A We've done work down in Sioux Falls as a company. And</p> <p>6 primarily most of our work is in the Fargo, Moorhead, West</p> <p>7 Fargo area. So within 50 miles.</p> <p>8 Q I realize you're not here as a geography expert. But</p> <p>9 can we agree Sioux falls is more than 50 miles from</p> <p>10 Watertown?</p> <p>11 A Yeah.</p> <p>12 Q Okay. Would it not have been beneficial to speak with</p> <p>13 someone who has done work in the Watertown market?</p> <p>14 A My opinion is that, whether it's in the Watertown</p> <p>15 market or it's in the Fargo or Moorhead market, they are</p> <p>16 similar enough. The scope of work with the project is</p> <p>17 similar enough. It's going to get within a range of what I</p> <p>18 would expect. I don't see it ranging further because it's</p> <p>19 in Watertown specifically that would require me to reach out</p> <p>20 to subcontractors directly in Watertown to establish my</p> <p>21 opinion of the cost. So that was my basis for assumption in</p> <p>22 getting to that.</p> <p>23 Q I don't want to belabor this point. I'm aware that</p> <p>24 you're an expert in one field, and I'm not going to try to</p> <p>25 cross-qualify you. But you have been to Watertown at least</p>	<p style="text-align: right;">Page 152</p> <p>1 potential costs and expenses for all of the subs Mr. Hushka</p> <p>2 asked you about, right?</p> <p>3 A Correct.</p> <p>4 Q Okay. Your expert opinion though is that the cost of</p> <p>5 completion is \$1,695,967 and no cents, correct?</p> <p>6 A Correct.</p> <p>7 Q That's not a range. That's a very precise number. It</p> <p>8 ends with seven dollars. Why didn't you provide a range if</p> <p>9 there's some potential variance?</p> <p>10 A When I'm putting together an estimate, even though</p> <p>11 there could be a range plus or minus, I don't provide that</p> <p>12 range necessarily. So I guess I've never given an estimate</p> <p>13 with a range like that. I'm doing what I typically would do</p> <p>14 when I put together a cost or an opinion of cost. And I get</p> <p>15 to a number.</p> <p>16 Q Can we agree that with a range that number could be</p> <p>17 lower or nigher?</p> <p>18 A Yeah.</p> <p>19 Q Okay. I mean, it could be \$1,695,966.</p> <p>20 A It could be.</p> <p>21 Q Or even lower than that.</p> <p>22 A Yeah. The cost is our opinion of what it would take to</p> <p>23 complete the project. So that could range depending on</p> <p>24 timing of when subcontractors are bidding it. That could</p> <p>25 vary on their current scope of work. That could vary in a</p>
<p style="text-align: right;">Page 151</p> <p>1 a few times, right?</p> <p>2 A Correct.</p> <p>3 Q And you live somewhere in or about the Fargo-Moorhead</p> <p>4 market, correct?</p> <p>5 A Correct?</p> <p>6 Q Generally speaking, just observations as a human being,</p> <p>7 not as an expert, there is a slightly different economic</p> <p>8 condition in Watertown, South Dakota than in Fargo, North</p> <p>9 Dakota, right?</p> <p>10 A I would -- in my opinion they are similar enough where</p> <p>11 I could use my experience within the Fargo-Moorhead market</p> <p>12 to establish a cost.</p> <p>13 Q You think your experience in Fargo-Moorhead establishes</p> <p>14 what contractors in Watertown would charge?</p> <p>15 A Personally I do, at least to a range close enough to</p> <p>16 get to a number. If you're a plumber or an electrician,</p> <p>17 whether you have ten employees or a hundred employees,</p> <p>18 generally you're going to operate similar as a business</p> <p>19 whether you're in Watertown or you're in Fargo. So the type</p> <p>20 of subcontractor that's on these mixed use projects are very</p> <p>21 similar. They are smaller generally in size and operate</p> <p>22 very similarly, whether they are in the Fargo-Moorhead</p> <p>23 market or they're in a Watertown market or another market</p> <p>24 that's similar.</p> <p>25 Q You said a range, correct? Meaning there is a range of</p>	<p style="text-align: right;">Page 153</p> <p>1 market. That could vary with a number of different things.</p> <p>2 So it's a moment in time we're trying to capture a cost of</p> <p>3 what it might be to the best of our abilities without</p> <p>4 physically going and getting hard bids and hard numbers.</p> <p>5 That's a whole other process to develop a cost.</p> <p>6 Q Let's take a step back. When your company does general</p> <p>7 contractor work, does it pay subs with its own funds?</p> <p>8 A When we operate as a construction manager, we -- I'm</p> <p>9 going to get a little bit into the weeds I guess to explain</p> <p>10 that question. So construction manager versus general</p> <p>11 contractor. General contractor holds a single contract and</p> <p>12 pays all the subs directly. A construction manager, if it's</p> <p>13 acting as agent of the owner, it's a contractual delivery</p> <p>14 method. The contract for the sub is actually held directly</p> <p>15 with the owner and the owner pays the sub directly. If it's</p> <p>16 construction manager at risk, then the construction manager</p> <p>17 holds the contract for the sub and we pay the sub directly</p> <p>18 after we receive payment for the owner. So we as a company</p> <p>19 have operated in all three capacities, whether it's a GC, a</p> <p>20 CMA or a CM at risk, if that makes sense.</p> <p>21 Q That was actually enormously helpful. Thank you. Did</p> <p>22 your company act as a general contractor during the first 18</p> <p>23 months of the pandemic? And for ballpark purposes, say</p> <p>24 March 2020 forward.</p> <p>25 A If we -- for a project similar to this or just in</p>

<p style="text-align: right;">Page 154</p> <p>1 general capacity? What's your...</p> <p>2 Q That's a fair question. I appreciate it. Did your</p> <p>3 company act as a general contractor for an MDU, mixed</p> <p>4 dwelling unit project, during the period beginning March</p> <p>5 2020 and ending September 2021?</p> <p>6 A We acted as a construction manager, as an agent of the</p> <p>7 owner. Since we don't self-perform, we operate and manage</p> <p>8 the project as a construction manager and not a GC.</p> <p>9 Q Now, you said a moment ago your company has acted as a</p> <p>10 GC, correct?</p> <p>11 A Correct.</p> <p>12 Q How many times?</p> <p>13 A Numerous times. It just depends on the client and the</p> <p>14 project and the size of project. It varies. But numerous</p> <p>15 times.</p> <p>16 Q How many times since March of 2020?</p> <p>17 A Probably more than 20, more than 30, somewhere in that</p> <p>18 range. I don't know the specific number for you.</p> <p>19 Q But none during that 18-month period.</p> <p>20 Q None for mixed use type projects. But we have acted as</p> <p>21 a GC for other type projects during that timeframe for other</p> <p>22 clients and whatnot.</p> <p>23 Q Did you observe a general fluctuation in the cost of</p> <p>24 materials during that time period?</p> <p>25 A Yeah.</p>	<p style="text-align: right;">Page 156</p> <p>1 A Well, I guess my assumptions were still based on my</p> <p>2 observations. The fact that I have an incomplete set of</p> <p>3 plans at the time of that inspection I don't think changes</p> <p>4 what I observed I guess if that makes sense.</p> <p>5 Q Okay. You testified about an air conditioning can</p> <p>6 issue. Do you remember that?</p> <p>7 A Yeah.</p> <p>8 Q You indicated that one of them appeared to be -- and</p> <p>9 I'm paraphrasing -- one of them appeared to be too low,</p> <p>10 correct?</p> <p>11 A Say that again?</p> <p>12 Q You indicated one of them appeared to be too low.</p> <p>13 A Too low?</p> <p>14 Q Too low proximate to the ground.</p> <p>15 A I don't recall --</p> <p>16 MR. HUSHKA: So, Your Honor, I'd object. I think</p> <p>17 that mischaracterizes the too low or -- the wrong heights I</p> <p>18 think was the fire extinguishers, not in the AC unit. But I</p> <p>19 guess he can answer I guess his testimony. But...</p> <p>20 MR. VERSTANDIG: I remember the fire</p> <p>21 extinguishers, and I may have just misheard the witness.</p> <p>22 THE WITNESS: I don't recall saying anything about</p> <p>23 an AC being too low. That's not typically a scenario that</p> <p>24 is a concern on a project like that.</p> <p>25 BY MR. VERSTANDIG:</p>
<p style="text-align: right;">Page 155</p> <p>1 Q Did they go up or down?</p> <p>2 A Generally they went up as a result of the pandemic.</p> <p>3 Q Significantly or marginally?</p> <p>4 A I'd say significantly.</p> <p>5 Q Okay. Let's talk about your report. You said that you</p> <p>6 made an assumption regarding the CMU block completion. Do</p> <p>7 you remember that?</p> <p>8 A Yeah.</p> <p>9 Q What was the assumption?</p> <p>10 A The assumption was the scope of what was entailed</p> <p>11 within that. So my assumption was that there was some</p> <p>12 amount of work that needed to be installed on the first</p> <p>13 floor to complete CMU.</p> <p>14 Q Now, why is that an assumption and not something that</p> <p>15 you were able to objectively discern based on your multiple</p> <p>16 visits to the property?</p> <p>17 A During the first report, at the time of the first</p> <p>18 report I did not have a floor plan that showed accurately</p> <p>19 what was being built there. At the time of cost of</p> <p>20 completion, I did have a full set of plans that I was able</p> <p>21 to reference. So when I referred to my assumption, it was</p> <p>22 based on my assumptions that I made during my observations</p> <p>23 in the first report.</p> <p>24 Q So the various times you talked about assumptions,</p> <p>25 that's based on an outdated scope of knowledge on your part?</p>	<p style="text-align: right;">Page 157</p> <p>1 Q Were there issues with the placement of the AC cans</p> <p>2 that you observed?</p> <p>3 A Nothing specific that I recall without seeing the --</p> <p>4 forgive me if there's a note in the report. It was in April</p> <p>5 of 2024.</p> <p>6 Q Okay. Now, you testified there with doors you were</p> <p>7 assuming half of them were on site and available. Do you</p> <p>8 remember saying that?</p> <p>9 A Yes.</p> <p>10 Q Why would that be an assumption? Why wouldn't you just</p> <p>11 check to see how many doors there are?</p> <p>12 A I did not do an accounting of all of the particular</p> <p>13 doors that were on site. Some of them were leaned up</p> <p>14 against the door openings or near the door openings. Others</p> <p>15 were not there. So I don't recall how many and how specific</p> <p>16 the observation was.</p> <p>17 Q You did account for certain things. You testified that</p> <p>18 there's no washers and dryers, right?</p> <p>19 A Right.</p> <p>20 Q Why would you account for certain things and not others</p> <p>21 if it was going to go into your cost of materials</p> <p>22 assessment?</p> <p>23 A Well, specifically regarding the appliances, it's</p> <p>24 fairly easy as we're walking through the units to determine</p> <p>25 is there a washer and a dryer in the unit. If there's not,</p>

<p style="text-align: right;">Page 158</p> <p>1 is there a large stack of washer and dryers on the first 2 floor. Those are fairly easy items to identify whether 3 they're on site or not. But boxes of hardware and 4 components that are in small packages that typically once 5 you open them up and they're not secure, they just -- in the 6 course of construction they tend to be lost. So I didn't 7 want to rummage through any materials to cause further issue 8 with cost of completion or construction completion. So 9 items that were easily identifiable by visible inspection or 10 observation were the items that we validate. Others that 11 were more specific like that, we didn't open things up and 12 do counts of everything.</p> <p>13 Q I don't want to be too argumentative here, but surely 14 we can agree that a door is of a size it's easily countable. 15 It's not a screw or a bolt.</p> <p>16 A That's fair.</p> <p>17 Q Okay. So you could have checked, but you chose not to.</p> <p>18 A Yes.</p> <p>19 Q Okay. Why is the absence of washers and dryers a 20 problem?</p> <p>21 A Why is the absence a problem?</p> <p>22 Q Yeah.</p> <p>23 A The cost of the material I guess is the main issue from 24 my perspective.</p> <p>25 Q How many units is this building supposed to be?</p>	<p style="text-align: right;">Page 160</p> <p>1 project. Based on my records and inspection, I believe the 2 following appliances are currently missing from The Ruins 3 project. 15 dishwashers, 15 ranges/stoves, 16 microwaves, 4 28 refrigerators, 25 washing machines, 28 clothes dryers."</p> <p>5 MR. HUSHKA: Your Honor, we would object. I don't 6 believe that this document is in evidence. I'm not sure if 7 he's trying to impeach Mr. Gehrtz that he's providing an 8 inaccurate number or if he's implying that Mr. Aarestad's 9 tabulation is incomplete. I'm not sure where this is going 10 at this point.</p> <p>11 THE COURT: Me neither. So I'm going to let him 12 ask the next question. And you may object again.</p> <p>13 BY MR. VERSTANDIG:</p> <p>14 Q Mr. Gehrtz, if 25 washing machines are missing, would 15 that lead you to believe that thirty-some-odd washing 16 machines are present?</p> <p>17 MR. HUSHKA: Objection, Your Honor. Foundation. 18 It assumes that 25 are missing. This document is not in 19 evidence.</p> <p>20 THE COURT: Sustained.</p> <p>21 MR. VERSTANDIG: All right. Then in that case we 22 would ask to go to docket entry 60-1 at Page 309. And this 23 document is in evidence. This is the expert's report.</p> <p>24 THE COURT: I missed the page number. Which 25 number?</p>
<p style="text-align: right;">Page 159</p> <p>1 A My understanding is 63 I believe without looking at -- 2 Q That's -- what you have in your second report for what 3 it's worth. Okay. So 63 units. How many washers and 4 dryers would that be?</p> <p>5 A It would be 63 washers and 63 dryers.</p> <p>6 Q Okay.</p> <p>7 MR. VERSTANDIG: Your Honor -- I'm sorry, Madam 8 Clerk, could we pull up Docket Entry 61? And we're going to 9 go to Paragraph 20. I guess we'll just start on the first 10 page.</p> <p>11 BY MR. VERSTANDIG:</p> <p>12 Q I'm going to represent to you that this is an affidavit 13 of Charles Aarestad. I don't expect you to have ever seen 14 this document before. But can we agree that's at least what 15 it says?</p> <p>16 A Yes.</p> <p>17 Q Okay. And Charles Aarestad is the person who 18 originally engaged your services, correct?</p> <p>19 A Yes.</p> <p>20 Q All right. And can we scroll to Paragraph 20 please? 21 Which is going to sort of split two pages. Here it says, 22 "I've reviewed all of the Debtor's prior draw requests and 23 related invoices for appliances for The Ruins project. I've 24 also personally inventoried, photographed and recorded the 25 serial numbers of the appliances on site at The Ruins</p>	<p style="text-align: right;">Page 161</p> <p>1 MR. VERSTANDIG: 309.</p> <p>2 THE COURT: Thank you.</p> <p>3 MR. VERSTANDIG: Thank you, Your Honor.</p> <p>4 BY MR. VERSTANDIG:</p> <p>5 Q All right. And Mr. Gehrtz, you took the photographs 6 that are in this document, correct?</p> <p>7 A Correct.</p> <p>8 Q Okay. Mr. Gehrtz, do you see a box in the first 9 photograph to the right of the text?</p> <p>10 A Yeah.</p> <p>11 Q Can you read what that box says?</p> <p>12 A It appears to say washer.</p> <p>13 Q That leads you to believe there was a washer on site?</p> <p>14 A On that particular photo it would be, yes.</p> <p>15 Q Okay. So when you testified previously that there were 16 no washers or dryers, that was probably inaccurate to some 17 degree.</p> <p>18 A Specifically to that I would say yes, I don't recall if 19 my report indicated it that way or if I just misspoke.</p> <p>20 Q Okay. You testified a bit about -- I'm sorry, we can 21 close the report. Thank you, Madam Clerk. You testified 22 about luxury vinyl tile. Do you remember that?</p> <p>23 A Yeah.</p> <p>24 Q And I think that's referred to as LVT, correct?</p> <p>25 A Correct.</p>

<p style="text-align: right;">Page 162</p> <p>1 Q I know that Mr. Hushka asked you this, and I don't mean  2 to be redundant. But I'll be honest, it's a phrase I didn't  3 really know until a week ago. What is luxury vinyl tile?  4 A It's a laminate flooring of some sort essentially.  5 There's various different types of floorings that can be  6 classified as LVT.  7 Q Does an apartment building require luxury vinyl tile?  8 A No.  9 Q Are there apartment buildings constructed in this day  10 and age -- not historic times -- without luxury vinyl tile?  11 A I can't speak for them, but I would assume probably  12 there are some that don't have LVT in them.  13 Q Okay. Did you do anything to ascertain whether or not  14 LVT is part of the design for this building?  15 A It was installed on one of the floors I believe. I  16 think the fourth floor had --  17 Q And you're confident that what you saw is LVT?  18 A I take that back. I don't believe there was any  19 flooring installed.  20 Q Okay. So why are you assuming a need for LVT in this  21 project?  22 A There was carpet installed in the bedrooms. So if some  23 areas had carpet in the rooms but not the entire room being  24 carpeted, my assumption was that it was a typical flooring  25 to apartment, which would be an LVT type product.</p>	<p style="text-align: right;">Page 164</p> <p>1 A That's correct.  2 Q If any means there may not be any, right?  3 A That's possible.  4 Q Okay. Why is it 95 percent and not a hundred?  5 A The way I classify percent completion is typically the  6 last five percent of a project isn't deemed fully completed  7 until a full punch list and detailed walk-through with  8 either owner or stakeholders have been completed. So that's  9 why even though it may be complete, I deem it as 95 percent  10 complete until it's been verifiably completed with an  11 official punch list with owner and stakeholders.  12 Q So if it's possible that there wouldn't be punch list  13 items, this might actually be a hundred percent, right?  14 A It is possible, yes.  15 Q Okay. So for each of your approximations of progress,  16 five percent that's been deducted, for want of a better  17 term, is hypothetical.  18 A I guess that's based on my experience in project  19 closeout. It also relates to retainage payment. Typically  20 retainage payment isn't released to subcontractors until a  21 punch list is formally completed and items are checked and  22 verified to be completed. So when I think about fully  23 complete, I think about a completed punch list when a  24 building is being turned over and then the retainage  25 payment is paid to a subcontractor.</p>
<p style="text-align: right;">Page 163</p> <p>1 Q But there are other types of flooring that could have  2 been there. Or I believe your quote called for additional -  3 - sorry, carpeting, not carpentry.  4 A Yeah. Yeah. It could be a carpet tile. It could be a  5 padded carpet. But some type of flooring material would  6 have to be installed over the gypcrete.  7 Q Okay.  8 MR. VERSTANDIG: And madam clerk, I'm sorry. Can  9 we go back to the same docket entry? I will admit that I'm  10 trying not to hop around as badly as I think I am. At this  11 time I'd like to go to Page 21, please.  12 BY MR. VERSTANDIG:  13 Q Now, here you indicated that ceiling fans are  14 approximately 95 percent complete, correct?  15 A Correct.  16 Q Okay. And on the second floor you observed them in all  17 units.  18 A That's what I recall, yes.  19 Q Same for the third and fourth floor, right?  20 A Correct. Correct.  21 Q I'm sorry. I literally didn't hear you, and I  22 apologize.  23 A That's correct.  24 Q Okay. And you said that there's only minor if any  25 punch items -- punch list items remaining, correct?</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. VERSTANDIG: Madam Clerk, this time I promise  2 that I actually an done with this document.  3 BY MR. VERSTANDIG:  4 Q Now, we talked -- and Mr. Hushka mentioned this again a  5 moment ago about the fire extinguishers and the cavities for  6 them in the hallways, correct?  7 A Correct.  8 Q Okay. And you said that you thought they seemed high.  9 And again, that's a paraphrase, not a quote.  10 A That's correct.  11 Q Did you check the state municipal -- whatever the  12 applicable building code would have been?  13 A I didn't, no.  14 Q Are you familiar with South Dakota's building codes?  15 A I believe that it's a similar building code nationally.  16 There may be some local jurisdictions that provide, but  17 generally speaking it's international building code.  18 Q Did you measure the height from the floor?  19 A I don't recall measuring specifically.  20 Q So you eyeballed it and you didn't look at the local  21 building code.  22 A I also didn't include any of that in the cost to  23 repair, either.  24 Q But you included it as an issue with the project.  25 A I believe I referred to it as a potential issue.</p>



<p style="text-align: right;">Page 166</p> <p>1 Q Okay. And going back to things that weren't counted.</p> <p>2 You didn't count the number of toilets on site, did you?</p> <p>3 A I personally did not.</p> <p>4 Q Did a member of your team?</p> <p>5 A I don't believe so.</p> <p>6 Q That would impact cost of completion, would it not?</p> <p>7 A When I put together my cost of completion, I'm assuming</p> <p>8 best case scenario that materials are on site. So if it</p> <p>9 didn't account for it, it would be more cost.</p> <p>10 Q Okay. You talked about the broken boxed toilet at one</p> <p>11 point. Do you remember that?</p> <p>12 A I don't recall that. Can you reference when that was?</p> <p>13 Q I'm not trying to be a smart aleck. Your testimony</p> <p>14 this morning.</p> <p>15 A Okay.</p> <p>16 Q Let me ask it differently then. Did you observe any</p> <p>17 broken toilets that have formed a part of your expert</p> <p>18 opinion in this case?</p> <p>19 A I believe that I did.</p> <p>20 Q Okay. Were any of the ones you observed still in their</p> <p>21 box?</p> <p>22 A I don't recall. I believe so, but I don't recall for</p> <p>23 certain.</p> <p>24 Q And I think you did testify that when toilets are</p> <p>25 shipped in boxes, there are sometimes issues where they are</p>	<p style="text-align: right;">Page 168</p> <p>1 documented at the time of receipt, the project manager or</p> <p>2 general contractor would have been the appropriate person</p> <p>3 with whom to make inquiry, right?</p> <p>4 A Yeah.</p> <p>5 Q In your experience is concrete work normally</p> <p>6 warrantied?</p> <p>7 A If it's not installed per plan, there is a potential</p> <p>8 for it to be warrantied or warrantable.</p> <p>9 Q I didn't mean to cut you off. I'm sorry about that. I</p> <p>10 think you had testified that there was some sort of concrete</p> <p>11 issue that led to there being a step approaching the</p> <p>12 building.</p> <p>13 A On the alley side of the building I recall a step from</p> <p>14 the alley to the finished grade of the parking area.</p> <p>15 Q Okay. In your experience would that be within</p> <p>16 warranty?</p> <p>17 A No, because my experience would be that the -- my</p> <p>18 assumption in this case is that there is -- typically what I</p> <p>19 see is that a subcontractor will install it per the plan.</p> <p>20 And if the elevations aren't noted properly on a plan set,</p> <p>21 then it's not really their responsibility to try to solve</p> <p>22 it. What I see is they install it. If there isn't proper</p> <p>23 oversight or management, they're trying to complete their</p> <p>24 scope of work and get paid and get out of the job.</p> <p>25 So in this particular case, would have to confirm and</p>
<p style="text-align: right;">Page 167</p> <p>1 broken or in need of repair, correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. And when those issues arise, those are normally</p> <p>4 covered by a warranty in your experience, aren't they?</p> <p>5 A Depending on the situation, if it was a shipping issue,</p> <p>6 it may not be a warranty issue. So it may need to be with</p> <p>7 the vendor. But in general terms it's possible.</p> <p>8 Q In your experience, how often is a builder made to bear</p> <p>9 the replacement cost of something that arrives in broken</p> <p>10 condition?</p> <p>11 A It's arrived or if it arrives in broken condition,</p> <p>12 and it's documented and recorded at the time of receipt,</p> <p>13 then typically there is a case for warranty. If it's not</p> <p>14 documented at the time of receipt, then it's usually bore by</p> <p>15 the contractor.</p> <p>16 Q And you don't know what was documented at the time of</p> <p>17 receipt here, do you?</p> <p>18 A I do not.</p> <p>19 Q You would have been able to find that out by</p> <p>20 contracting Mr. Craig though, right?</p> <p>21 A I don't know. I don't know that answer. That's</p> <p>22 assuming that it was documented properly at the time and</p> <p>23 it's...</p> <p>24 Q Well, I'm not asking if it was documented properly.</p> <p>25 I'm asking if you wanted to find out if something was</p>	<p style="text-align: right;">Page 169</p> <p>1 verify that the drawing set had shown an elevation</p> <p>2 difference. Regardless if it was shown or not, it's work</p> <p>3 that has to be repaired to be functional.</p> <p>4 Q And you didn't look into what the drawing set did or</p> <p>5 did not show in this case?</p> <p>6 A During our site observation, we did not have that</p> <p>7 information.</p> <p>8 Q Okay. You're currently sitting in a bankruptcy</p> <p>9 courtroom, right?</p> <p>10 A Correct.</p> <p>11 Q You also didn't look into whether the subcontractor had</p> <p>12 been paid, did you?</p> <p>13 A I did not look into whether they had been paid.</p> <p>14 Q Okay. A significant part of your estimate was the cost</p> <p>15 of Tyvek. I think you had it at about \$195,000. Does that</p> <p>16 sound right?</p> <p>17 A That was for the installation of all the siding. In</p> <p>18 addition to that was replacement of Tyvek. Or included in</p> <p>19 that, excuse me, was the installation for Tyvek. The</p> <p>20 majority of that scope was the installation of the metal</p> <p>21 panels on the exterior of the building.</p> <p>22 Q And when did you last observe the existence or lack</p> <p>23 thereof of Tyvek on this building?</p> <p>24 A It would be our most recent site visit, which would be</p> <p>25 when we prepared the opinion for cost of work.</p>

<p style="text-align: right;">Page 170</p> <p>1 MR. VERSTANDIG: Madam clerk, could we please pull</p> <p>2 up docket entry 182-2?</p> <p>3 BY MR. VERSTANDIG:</p> <p>4 Q Does this appear to be the building that you've</p> <p>5 inspected?</p> <p>6 A Yes, it does appear that way.</p> <p>7 Q And if we could scroll to the second page, please. I</p> <p>8 can't believe I'm asking this question, but I'm going to.</p> <p>9 Is the thing clearly labelled Tyvek what you have referred</p> <p>10 to as Tyvek?</p> <p>11 A Yes. That's what I'm referring to.</p> <p>12 Q Okay.</p> <p>13 A Building wrap.</p> <p>14 Q Was that Tyvek there when you last inspected?</p> <p>15 A What was the date of this photo?</p> <p>16 Q If I answer that question, Mr. Hushka is going to</p> <p>17 object. So I'm just asking if what you saw was there. Or</p> <p>18 if you don't remember, that's a perfectly fine answer.</p> <p>19 A I don't recall. I'm not sure whether or not this</p> <p>20 section of Tyvek had been repaired at the time. I don't</p> <p>21 believe it was, but I don't recall specially.</p> <p>22 Q Okay. And could we please scroll to the third page?</p> <p>23 Just a different angle. Does this give you any better</p> <p>24 recollection?</p> <p>25 A I don't recall.</p>	<p style="text-align: right;">Page 172</p> <p>1 A No.</p> <p>2 Q You don't know what those trades charge as your usual</p> <p>3 and customary rates, do you?</p> <p>4 A No.</p> <p>5 Q And you don't know if those trades earned any money for</p> <p>6 their work on Ruins, do you?</p> <p>7 A I don't know that specifically. If there is a lien on</p> <p>8 the building for that particular subcontractor, I would</p> <p>9 assume that would imply that they are owed money, but I</p> <p>10 don't know that for sure.</p> <p>11 Q Now, you viewed this building three times and you're an</p> <p>12 expert in commercial construction, right?</p> <p>13 A Correct.</p> <p>14 Q Let's turn this around. Let's not focus for a second</p> <p>15 on the cost of completion. Do you have a sense of what the</p> <p>16 cost to get the building into its current condition would</p> <p>17 have been?</p> <p>18 A If I were to put this -- if I were to do an estimate of</p> <p>19 an initial build, I would imagine that the cost would be</p> <p>20 anywhere between \$225,000 to \$250,000 per residential unit.</p> <p>21 It's typically how -- just a ballpark range. I don't know</p> <p>22 how that fits into the math, but that's generally speaking</p> <p>23 where I would put it.</p> <p>24 Q So you said \$225,000 to \$250,000. Correct?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 171</p> <p>1 Q Okay.</p> <p>2 MR. VERSTANDIG: That's all I have with that</p> <p>3 exhibit. Thank you.</p> <p>4 BY MR. VERSTANDIG:</p> <p>5 Q You had been asked about certain trades. And that's</p> <p>6 sort of parlance for subcontractors, right?</p> <p>7 A Yes.</p> <p>8 Q And Mr. Hushka had rattled off four of them toward the</p> <p>9 end of your direct examination. Do you remember that?</p> <p>10 A I do.</p> <p>11 Q I think you said -- and again, not wanting to put words</p> <p>12 in your mouth -- that you're not familiar with at least one</p> <p>13 of them.</p> <p>14 A Correct.</p> <p>15 Q Okay. So you don't know which services those trades</p> <p>16 would or would not be qualified to do?</p> <p>17 A I haven't worked specifically with them as a</p> <p>18 subcontractor, so no.</p> <p>19 Q You don't know if those trades employ a master</p> <p>20 electrician, a properly licensed plumber, a painting crew,</p> <p>21 or anything else?</p> <p>22 A No.</p> <p>23 Q Okay. You don't know if those trades perform one</p> <p>24 discrete area of work or a multitude of areas of work, do</p> <p>25 you?</p>	<p style="text-align: right;">Page 173</p> <p>1 Q And if I told you that \$225,000 times 63 units --</p> <p>2 that's what you have in your report, right?</p> <p>3 A Correct.</p> <p>4 Q Was \$14.1 million and change. That would sound right,</p> <p>5 yeah?</p> <p>6 A Cost of construction it's the very low end. And I</p> <p>7 would say that's probably at the start of the project pre-</p> <p>8 pandemic.</p> <p>9 Q Okay.</p> <p>10 MR. VERSTANDIG: Your Honor, I would like to take</p> <p>11 a brief recess before I conclude with the witness just so I</p> <p>12 can speak to my client. I know we were hoping to get closer</p> <p>13 to the top of the hour. And I'm sorry if I moved a little</p> <p>14 to quickly.</p> <p>15 THE COURT: No, now is a good time to take a</p> <p>16 break. So ten minutes. Maybe get back around 12:35.</p> <p>17 MR. VERSTANDIG: Sounds good. Thank you, Your</p> <p>18 Honor.</p> <p>19 (Recess)</p> <p>20 THE COURT: Please be seated. All right. We're</p> <p>21 back on the record with bankruptcy Case Number 25-30004, In</p> <p>22 re The Ruins. And when we broke, you were about to complete</p> <p>23 your cross-examination, Mr. VerStandig. You may proceed.</p> <p>24 MR. VERSTANDIG: Thank you, Your Honor. Just a</p> <p>25 couple more questions.</p>

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<p>1 BY MR. VERSTANDIG:</p> <p>2 Q Mr. Gehrtz, from everything you've testified to today,</p> <p>3 while it would certainly take materials and effort, it would</p> <p>4 be very feasible to complete this project, correct?</p> <p>5 A I think it's feasible to complete this project, yes.</p> <p>6 Q Okay. And in your experience in the field, completing</p> <p>7 the project would add significant value to it, correct?</p> <p>8 MR. HUSHKA: Objection. I believe beyond the</p> <p>9 scope of his certified expertise regarding appraisal.</p> <p>10 THE COURT: No, I'll allow it.</p> <p>11 MR. HUSHKA: Okay.</p> <p>12 MR. VERSTANDIG: I didn't ask for the number. I</p> <p>13 just asked whether or not it would add value.</p> <p>14 THE COURT: Yeah. I overruled the objection.</p> <p>15 Sorry. I wasn't very articulate about that. So you may</p> <p>16 answer.</p> <p>17 THE WITNESS: Okay. Furthering the construction</p> <p>18 would add value to the project.</p> <p>19 MR. VERSTANDIG: Thank you, Your Honor. Nothing</p> <p>20 further for this witness.</p> <p>21 THE COURT: Mr. Feist, do you have any questions?</p> <p>22 MR. FEIST: No, I do not. Thank you.</p> <p>23 THE COURT: Is there anybody else on the video</p> <p>24 conference that is not appearing right now, that you have</p> <p>25 your video conference equipment off? Okay. All right. I</p>	<p>1 Q When making your third report and your opinions, the</p> <p>2 assumptions that you made, were you basing that on what was</p> <p>3 actually to be constructed and just your views, or how did</p> <p>4 those two interact? I'm not sure I understood or fully</p> <p>5 tracked that. Were you assuming -- were you using your same</p> <p>6 assumptions from the first report or were you actually</p> <p>7 making assumptions to complete per project specifications?</p> <p>8 A I was making my cost on the project and specifications,</p> <p>9 but also referencing my assumptions and my observations.</p> <p>10 Sorry, my observations from my prior reports.</p> <p>11 Q So your observations were from prior, but you were</p> <p>12 tying those to relate it to how this project is supposed to</p> <p>13 be completed?</p> <p>14 A Correct.</p> <p>15 Q Thank you. One thing on that report --</p> <p>16 MR. HUSHKA: and Sharon, if I can have you pull up</p> <p>17 ECF 60-1, Page 406. This is that summary exhibit that was</p> <p>18 admitted.</p> <p>19 BY MR. HUSHKA:</p> <p>20 Q While she's getting that pulled up, Mr. Gehrtz, do you</p> <p>21 recall being asked questions regarding ceiling fans from Mr.</p> <p>22 VerStandig?</p> <p>23 A Yes.</p> <p>24 Q And specifically was asked that you only noted it as 95</p> <p>25 percent completed even though it may have been a hundred</p>
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<p>1 only permit those parties that appear by video conference or</p> <p>2 in-person to offer evidence or cross-exam. There are no</p> <p>3 other parties indicating a -- wishing to ask questions or</p> <p>4 eligible to ask questions, so I'm going to go back to</p> <p>5 redirect. Mr. Hushka?</p> <p>6 MR. HUSHKA: Thank you, Your Honor.</p> <p>7 REDIRECT EXAMINATION OF MATTHEW GEHRTZ</p> <p>8 BY MR. HUSHKA:</p> <p>9 Q Mr. Gehrtz, one thing I want to clear up to make sure I</p> <p>10 am understanding it correctly. Mr. VerStandig asked you</p> <p>11 about various assumptions you made versus the completed</p> <p>12 plans and everything of that nature. And I just wanted to</p> <p>13 clarify to make sure I have it right or for you to correct</p> <p>14 me. You said I believe at the time of the first inspection</p> <p>15 that you made assumptions because you had not viewed</p> <p>16 completed plans. Is that accurate?</p> <p>17 A That's correct.</p> <p>18 Q But you ultimately did receive at some point a plan for</p> <p>19 The Ruins development?</p> <p>20 A That's correct.</p> <p>21 Q When was that?</p> <p>22 A It was during my development of the cost of work,</p> <p>23 opinion of cost of work.</p> <p>24 Q So prior to your third report.</p> <p>25 A Prior to my report.</p>	<p>1 percent completed. Is that an accurate summary?</p> <p>2 A Yes.</p> <p>3 Q Do you recall -- and we'll get this pulled up. Did you</p> <p>4 have any costs associated with completing ceiling fan</p> <p>5 construction in this summary?</p> <p>6 A No.</p> <p>7 Q Even though you had it down as 95 percent complete and</p> <p>8 allowing for a punch list five percent, you didn't associate</p> <p>9 any cost with that five percent?</p> <p>10 A Correct.</p> <p>11 Q The estimates that you did provide in here are your</p> <p>12 opinions as to cost to completion, when was this provided</p> <p>13 again?</p> <p>14 A I believe it's dated May 13th of 2025.</p> <p>15 Q Would that have been post-COVID-influenced inflation?</p> <p>16 A Yes.</p> <p>17 Q And these are the costs essentially post-COVID, not</p> <p>18 pre-COVID?</p> <p>19 A Correct.</p> <p>20 Q When you were asked to provide your opinions in this</p> <p>21 report, were you retained to try to figure out the cost if</p> <p>22 these same subcontractors were used that had begun the</p> <p>23 project, or were you asked to provide a general estimate</p> <p>24 regarding general market for the cost?</p> <p>25 A General market for the cost.</p>

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<p>1 Q Is that why you didn't talk to any of the</p> <p>2 subcontractors that had performed work?</p> <p>3 A Correct.</p> <p>4 Q As for the subcontractors that did perform work on this</p> <p>5 project -- this is a continued hearing. So earlier on Mr.</p> <p>6 Craig had testified that he brought in subcontractors from</p> <p>7 out of town and had essentially stacked them to work on this</p> <p>8 project and the other two projects.</p> <p>9 MR. HUSHKA: Mr. VerStandig, you can object if you</p> <p>10 believe I'm mischaracterizing that.</p> <p>11 BY MR. HUSHKA:</p> <p>12 Q But if crews were brought in from outside the Watertown</p> <p>13 region, do you believe that your knowledge and your general</p> <p>14 experience and the quotes that you used are applicable if</p> <p>15 the crews that performed work on this were brought in from</p> <p>16 outside the region?</p> <p>17 A I do.</p> <p>18 Q And do you have any trepidations or reservations or</p> <p>19 concerns as we sit here today about the accuracy of the</p> <p>20 projections and opinions that you provided?</p> <p>21 A No, I don't.</p> <p>22 MR. HUSHKA: Nothing further, Your Honor.</p> <p>23 THE COURT: Recross?</p> <p>24 MR. VERSTANDIG: None, Your Honor.</p> <p>25 THE COURT: On behalf of Watertown Development</p>	<p>1 believe for some of the various things she will testify to.</p> <p>2 THE COURT: Okay. So I'm going to look to Debtor.</p> <p>3 Do you have a witness that you think could be taken out of</p> <p>4 order. Or if you would prefer to, you can definitely follow</p> <p>5 the order that you want to, just like Red River State Bank</p> <p>6 is. And then do you have an opinion about whether you think</p> <p>7 it would be helpful to just begin with that witness knowing</p> <p>8 that we have to have a cutoff somewhere between 1:30 and</p> <p>9 1:45? So what are your thoughts about that? About the</p> <p>10 logistics of the remaining hearing. Go ahead.</p> <p>11 MR. VERSTANDIG: Yeah. With the witness out of</p> <p>12 order, I think the answer is twofold, but not helpful.</p> <p>13 While it's probably theoretically doable, we also didn't</p> <p>14 expect any of our witnesses were going to testify today. So</p> <p>15 they are not exactly here and ready. So I think one happens</p> <p>16 to be watching on Zoom, but that's not something that we're</p> <p>17 really prepared to launch into at the moment.</p> <p>18 I will say generally I don't think any of our</p> <p>19 witnesses, with the possible exception of Mr. Craig are</p> <p>20 going to be overly loquacious. I expect it will be a</p> <p>21 relatively brief presentation. There may be a number of</p> <p>22 them, but they will be short and punchy on Tuesday.</p> <p>23 I can certainly respect and appreciate that the</p> <p>24 bank doesn't want someone on the stand for five days knowing</p> <p>25 that would limit their ability to communicate with them</p>
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<p>1 anything further?</p> <p>2 MR. FEIST: No, thank you.</p> <p>3 THE COURT: Okay. Then you may be excused.</p> <p>4 MR. HUSHKA: Your Honor, procedurally -- I'm going</p> <p>5 to defer to the court on how it wants to proceed. Our next</p> <p>6 witness would be Mr. Josh Luther would be another expert,</p> <p>7 would be our appraisal expert. Obviously, his testimony I</p> <p>8 believe is going to be much longer than the one hour that we</p> <p>9 have today. So I don't know if the Court would want to keep</p> <p>10 him on the stand for the five days or if we want to just</p> <p>11 call him on Tuesday, or how the Court wants to proceed.</p> <p>12 Also obviously wanting to maximize times that we can</p> <p>13 hopefully wrap this up next week as well. So I don't -- I'd</p> <p>14 defer to the Court to how it wants to handle this</p> <p>15 logistically.</p> <p>16 THE COURT: So can you tell me if you are asking -</p> <p>17 - if you are going to call any other witnesses other than</p> <p>18 Mr. Luther, or is he your last witness?</p> <p>19 MR. HUSHKA: He is not our last witness. We also</p> <p>20 I believe will be calling Ms. Danielle Harless as well. And</p> <p>21 I believe we may call Mr. Craig. We haven't made a decision</p> <p>22 as to that. While Ms. Harless' testimony would be</p> <p>23 significantly shorter, it builds upon the expert opinions</p> <p>24 that will be provided by Mr. Luther. And so calling her now</p> <p>25 would be a bit confusing or there wouldn't be foundation I</p>	<p>1 during the recess. I'm also indifferent to that. Obviously</p> <p>2 if they want to put them up, that's fine by me and I'm happy</p> <p>3 to cross them on Tuesdays. But there may be better flow to</p> <p>4 having a two-minute recess between direct and cross as</p> <p>5 opposed to 24 times -- what is it, 120 hours?</p> <p>6 THE COURT: So is it the bank's preference to just</p> <p>7 wait until Tuesday to begin? Am I understanding?</p> <p>8 MR. HUSHKA: I believe it would be, Your Honor.</p> <p>9 THE COURT: Okay. So I'm hearing lots of</p> <p>10 witnesses left. Are we going to be able to finish on</p> <p>11 Tuesday?</p> <p>12 MR. HUSHKA: I believe Mr. Luther may be a similar</p> <p>13 timeframe to what Mr. Gehrtz was today. Again, not knowing</p> <p>14 what the cross would be from the other side, I believe my</p> <p>15 outline for his direct is slightly shorter length, but a</p> <p>16 similar -- he has three different or four different</p> <p>17 appraisal reports that we're at least going to touch on,</p> <p>18 focusing more on one than the rest of them. But at least</p> <p>19 touch to show the kind of flow of valuations that had been</p> <p>20 provided in this case. I believe or I am anticipating Mr.</p> <p>21 VerStandig will have some objections and we'll have some</p> <p>22 cross as it relates to him as well. And I see him nodding</p> <p>23 in affirmance. So I believe that would be most of the</p> <p>24 morning. Ms. Harless, I believe will be much shorter than</p> <p>25 our experts. But -- hour-and-a-half at most. And then</p>

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<p>1 again, I don't know -- again, we haven't made any decision</p> <p>2 as to Mr. Craig. I think it will depend on what comes in</p> <p>3 with those other two. And then I don't know what Mr.</p> <p>4 VerStandig believes is necessary or not for him.</p> <p>5 MR. VERSTANDIG: So, Your Honor, from our side,</p> <p>6 whether we try to synergistically do it through cross or do</p> <p>7 it as direct, Mr. Craig is going to take the stand. In</p> <p>8 terms of our other witnesses -- and I'm pulling up the list</p> <p>9 as we speak -- it is more likely than not that Barry Matson</p> <p>10 and Jason Biggins will each testify, but I don't think</p> <p>11 either of them are going to be very long. And I think my</p> <p>12 direct will probably be well under half an hour for each of</p> <p>13 them.</p> <p>14 Ms. Craig may retake the stand. But similarly,</p> <p>15 whether it's Ms. Cathcart or myself, I would anticipate</p> <p>16 that's 10 to 20 minutes. And then obviously we're going to</p> <p>17 use the weekend to assess strategy. But the other people on</p> <p>18 our list would be similar duration. And that's without</p> <p>19 cross. And I don't know how much time the bank would take</p> <p>20 there. I think Tuesday is certainly going to be a day. And</p> <p>21 I recognize, or at least I hope that no one is going to</p> <p>22 suggest Wednesday morning as the extension of Tuesday.</p> <p>23 THE COURT: Well, that was my next question. I</p> <p>24 don't remember where the parties were, but I was highly</p> <p>25 reluctant to use Wednesday. And I assume that means that</p>	<p>1 Erica, there is no reason -- I'm supposed to come out on</p> <p>2 Monday at the moment, but I'm sure I could rejigger that to</p> <p>3 Sunday.</p> <p>4 MS. TANABE: My co-counsel just reminded me that</p> <p>5 we do have court in another case on Monday. So we can</p> <p>6 definitely be here on Tuesday and Wednesday, but not Monday.</p> <p>7 THE COURT: Okay. Court in different -- different</p> <p>8 court, not this court?</p> <p>9 MR. HUSHKA: Southern District in New York.</p> <p>10 MS. TANABE: Yes.</p> <p>11 MR. HUSHKA: On Monday morning. And then I</p> <p>12 believe we do have the status conference in Hartford and CCU</p> <p>13 and Promark at 2:30 on my calendar at least.</p> <p>14 THE COURT: Yeah. That's -- yeah. So the morning</p> <p>15 is out you're telling me, right? Because I -- yeah, the</p> <p>16 morning is out. And so the afternoon I did schedule some</p> <p>17 hearings, which could take not that much time. But I don't</p> <p>18 know. If we wanted to start in the afternoon and carry it</p> <p>19 over, we could do that. When did I schedule them? Are they</p> <p>20 at 2:00 or -- okay. So in theory we could do 3:00 to 5:00.</p> <p>21 Does your flight get you in here by then?</p> <p>22 MR. VERSTANDIG: I'm actually scheduled to land a</p> <p>23 hair after -- a hair before 2:00 p.m. at the moment. So if</p> <p>24 planes land on time, I'll be there Monday anyway without</p> <p>25 rejiggering travel.</p>
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<p>1 you have a conflict, Mr. VerStandig?</p> <p>2 MR. VERSTANDIG: Your Honor, honestly, no. I'm</p> <p>3 supposed to take a one-way rental car from Fargo to Maine</p> <p>4 and spend the holiday in Canada, which is my idea of</p> <p>5 dreaminess. But I don't know that I want to ask everyone to</p> <p>6 be here the day before Thanksgiving. That seems a little</p> <p>7 bit cruel.</p> <p>8 THE COURT: I think so, too. Do you have any</p> <p>9 conflicts on behalf of Red River State Bank?</p> <p>10 MR. HUSHKA: I don't. I'm looking at my co-</p> <p>11 counsel and --</p> <p>12 MS. TANABE: On Wednesday? Wednesday morning?</p> <p>13 MR. HUSHKA: Red River State Bank would be</p> <p>14 available Wednesday morning if need be.</p> <p>15 THE COURT: Not excited. What's the backup plan?</p> <p>16 Will you bring up my calendar, Sharon?</p> <p>17 MS. TANABE: Your Honor, did we say Monday is not</p> <p>18 available, Monday the 24th?</p> <p>19 THE COURT: So --</p> <p>20 MS. TANABE: We are open on Wednesday the 26th. I</p> <p>21 just was confirming.</p> <p>22 THE COURT: Trying to remember. I ended up</p> <p>23 scheduling some hearings because I thought it was not</p> <p>24 available. I don't know. Mr. VerStandig?</p> <p>25 MR. VERSTANDIG: Assuming the availability of</p>	<p>1 THE COURT: Do we want to put two hours in on</p> <p>2 Monday? That would be something your witness could</p> <p>3 accommodate?</p> <p>4 MR. HUSHKA: I guess -- obviously we haven't</p> <p>5 confirmed with Mr. Luther, but we would all be available if</p> <p>6 we want to tentatively put that on the calendar. And we can</p> <p>7 inform the Court ASAP if he would not be available for some</p> <p>8 reason.</p> <p>9 THE COURT: Oh, is he on video? Do you want to</p> <p>10 ask him?</p> <p>11 MR. LUTHER: Yes, I am available. Sorry.</p> <p>12 THE COURT: Oh, great. Well, that worked out</p> <p>13 handy. All right. I mean, I think getting two hours in on</p> <p>14 direct might be a great idea.</p> <p>15 MR. HUSHKA: I agree. I think that if nothing</p> <p>16 else, we could find a good stopping spot. And one day</p> <p>17 overnight I am a lot more comfortable with than six days</p> <p>18 between now and Tuesday.</p> <p>19 THE COURT: Me too. And then it's important that</p> <p>20 I remember what's already been testified to. So that's a</p> <p>21 great help, to do it on Monday afternoon rather than now.</p> <p>22 Okay. So we'll resume then on Monday. If you're not</p> <p>23 finished, which I'm hopeful that that will be a really good</p> <p>24 start -- what's the following week? I think I have some</p> <p>25 flexibility the following week. Monday, December 1st is</p>

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<p>1 open. You know what? I have some flexibility the following</p> <p>2 week which we can visit about late on Tuesday if it looks</p> <p>3 like it's not going to happen. Do you want to preview that</p> <p>4 for me or do we want to just wait and hope that Tuesday is</p> <p>5 going to work?</p> <p>6 MR. VERSTANDIG: Your Honor, if it's going to be</p> <p>7 the following week, there would be a strong preference for</p> <p>8 it to be Monday. I'm looking. I have a non-essential and</p> <p>9 certainly re-schedulable medical appointment on Tuesday.</p> <p>10 And then I don't know if anyone else is headed to winter</p> <p>11 leadership, but that's Wednesday, Thursday, Friday.</p> <p>12 THE COURT: So it looks like I have Monday, right?</p> <p>13 What is that on there? Okay, great. Monday. I have Monday</p> <p>14 the -- is it the first of December? Yeah. So we can do our</p> <p>15 best on Tuesday.</p> <p>16 MR. VERSTANDIG: Your Honor, for this coming</p> <p>17 Monday if there is an issue with my flight and it's not</p> <p>18 going to be on time, may I appear via video again from</p> <p>19 presumably a hotel in Chicago or wherever it may be without</p> <p>20 filing a motion?</p> <p>21 THE COURT: Yes, you may.</p> <p>22 MR. VERSTANDIG: Thank you.</p> <p>23 THE COURT: Yes. Okay. I think we have the</p> <p>24 logistics. We are going to start Monday at 3:00. I may</p> <p>25 touch base with the security officers to see if we can stay</p>	<p>1 THE COURT: Not yet.</p> <p>2 MR. VERSTANDIG: Yeah. We're going to file an</p> <p>3 amended disclosure statement to go with the new plan. We</p> <p>4 don't plan to proceed on that.</p> <p>5 THE COURT: Okay.</p> <p>6 MS. TANABE: What time would you like us here on</p> <p>7 Tuesday the 25th?</p> <p>8 THE COURT: I don't have anything in the morning.</p> <p>9 Do we start at 8:30 again? That was early.</p> <p>10 MS. TANABE: 8:30 is good.</p> <p>11 THE COURT: Yeah. No, I'm not -- yeah. 8:30 was</p> <p>12 early. 8:30 is great for Tuesday. 3:00 for Monday.</p> <p>13 As to the disclosure statement, there have been</p> <p>14 cases where amended disclosure statements are filed and no</p> <p>15 party objects to the fact that there has been sufficient</p> <p>16 notice. But the parties here anticipate that would be a</p> <p>17 problem and you would need to serve it from the beginning</p> <p>18 ant notice it for 28 days. Is that your understanding?</p> <p>19 MR. VERSTANDIG: Your Honor, transparently, we'd</p> <p>20 love to go forward with it on Tuesday. We'd love to argue</p> <p>21 that it's not such a material amendment as to be an issue.</p> <p>22 But we've added a plan trustee. I don't know that I'm going</p> <p>23 to win that argument in good faith. And I think adding a</p> <p>24 plan trustee probably does require us giving the postal</p> <p>25 service some more money.</p>
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<p>1 until 6:00. Is that going to impose any -- yeah, that will</p> <p>2 be a problem? If it is, it is. I get the --</p> <p>3 MR. HUSHKA: I would have to confirm with my wife</p> <p>4 that she can do daycare pickup. But if she can, it's not a</p> <p>5 problem. But I don't know that as we sit here.</p> <p>6 THE COURT: Okay. So I will reserve. I</p> <p>7 completely understand those restrictions and obligations.</p> <p>8 So we'll shoot for wrapping up by 5:00 unless there is some</p> <p>9 opportunity extend. It wouldn't be any later than 6:00 I</p> <p>10 know because the building closes. And they'll get really</p> <p>11 angry with me. And then most of the Tuesday I at this time</p> <p>12 have one hearing in South Dakota that I know is going to go</p> <p>13 away. But that would be like a five-minute hearing. Oh, I</p> <p>14 might have to move another one, too. I've got another</p> <p>15 Minnesota hearing. I'll do my best to clear it so we can</p> <p>16 proceed.</p> <p>17 All right. Any other concerns about conflicts? I</p> <p>18 didn't ask you, Mr. Feist. Are you available Monday</p> <p>19 afternoon, all day Tuesday?</p> <p>20 MR. FEIST: Yes, I am. Thank you.</p> <p>21 THE COURT: Okay. Great. All right.</p> <p>22 MS. TANABE: Just for clarity.</p> <p>23 THE COURT: Sure.</p> <p>24 MS. TANABE: Is The Ruins disclosure statement</p> <p>25 hearing off the calendar on the 25th?</p>	<p>1 THE COURT: Okay. And you don't disagree, Red</p> <p>2 River State Bank?</p> <p>3 MS. TANABE: Correct.</p> <p>4 THE COURT: Okay. All right. So then I'm going</p> <p>5 to anticipate that that will not go forward if I see an</p> <p>6 amended disclosure statement. So we'll cross that bridge in</p> <p>7 terms of when that next hearing will be on another day. So</p> <p>8 that should leave most of the day on Tuesday for sure.</p> <p>9 MS. TANABE: And then just to clarify, we could</p> <p>10 potentially spill over into the 26th, or did you want us to</p> <p>11 not go forward --</p> <p>12 THE COURT: I would really like you to not.</p> <p>13 MS. TANABE: Okay.</p> <p>14 THE COURT: I think if Monday the 1st is</p> <p>15 available, I think we should not proceed on the 26th.</p> <p>16 If it happens to be a circumstance we're on the</p> <p>17 last witness and we have a half hour of testimony or some</p> <p>18 really unusual circumstance like that, I would consider it.</p> <p>19 But I'm going to try to avoid it in the interest of the</p> <p>20 sanity of all people participating. Okay. Anything</p> <p>21 further? Anything else you can think of?</p> <p>22 All right. This matter stands in recess until</p> <p>23 3:00 on Monday.</p> <p>24 (Whereupon these proceedings were concluded at</p> <p>25 12:59 PM)</p>



CERTIFICATION

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I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

*Sonya M. Ledanski Hyde*

Sonya Ledanski Hyde

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Date: December 2, 2025

[& - 27,000]

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